



4600 Giant Springs Rd.
Great Falls, MT 59405
October 23, 2020

Dear Interested Parties:

Montana Fish, Wildlife & Parks (MFWP) is proposing to purchase and manage a conservation easement (CE) on 1,733 acres owned by Keith and Runsigma Glass north of Denton, MT. This proposed CE, called the "Everson Bench Conservation Easement," will protect and conserve in perpetuity ~1,733 deeded acres of mixed agricultural lands and sagebrush-grassland habitat adjoining the Coffee and Arrow Breaks in deer/elk hunting district (HD) 426. The proposed CE serves as a gateway to ~9,000 acres of inaccessible of DNRC and BLM Upper Missouri Breaks National Monument lands. This CE will keep the property in private ownership, ensure habitat values are protected in perpetuity, and guarantee free public access for hunting and other recreational pursuits on and across CE lands, satisfying MFWP's objectives in providing access and recreational opportunities to the public.

MFWP is currently seeking review and public comment on the Draft Environmental Assessment (EA) for this proposed CE. The EA and associated documents, including the Draft Deed of Conservation Easement and Draft Management Plan may be obtained by viewing MFWP's internet website <http://fwp.mt.gov/news/publicNotices/environmentalAssessments/>. A 30-day public review and comment period will be available October 26 – November 25, 2020. A virtual public informational meeting is scheduled for November 5 via Zoom.

Comments may be made online on the EA webpage or may be directed by mail or e-mail to the addresses below. Comments must be received by MFWP no later than 5:00pm on November 25, 2020.

Everson Bench CE c/o Sonja Andersen
Montana Fish, Wildlife & Parks
Lewistown Area Office
333 Airport Rd
Lewistown, MT 59457
or email comments to: sandersen@mt.gov

As part of the decision-making process under the Montana Environmental Policy Act (MEPA), I expect to issue the Decision Notice for this EA soon following the end of the comment period. The Draft EA will be considered as final if no substantive comments are received by the deadline

listed above. The Montana Fish and Wildlife Commission has the final decision-making authority over MFWP CE proposals.

Thank you for your interest and involvement,

Sincerely,



Gary Bertellotti
Montana Fish, Wildlife & Parks
Region 4 Supervisor
Great Falls, MT 59405
gbertellotti@mt.gov
(406) 454-5840



DRAFT ENVIRONMENTAL ASSESSMENT

EVERSON BENCH CONSERVATION EASEMENT



October 2020



Table of Contents

1.0	Purpose of and Need for Action.....	4
1.1	Proposed Action	4
1.2	Need for Action	5
1.3	Location.....	6
1.4	Relevant Authorities.....	6
1.5	Relevant Plans	8
1.6	Decision to be Made.....	10
2.0	Alternatives.....	10
2.1	Alternative A: Proposed Action, purchase the proposed Everson Bench CE.....	10
2.2	Alternative B: No Action and no purchase of the proposed Everson Bench CE.....	12
3.0	Affected Environment	12
3.1	Land Use	12
3.2	Habitat	13
3.3	Terrestrial Species	13
3.4	Fisheries Species and Water Resources	14
3.5	Recreational Opportunities.....	14
4.0	Predicted Environmental Consequences	15
4.1	Land Use	15
4.2	Vegetation	15
4.3	Fish and Wildlife Resources	16
4.4	Water Resources.....	17
4.5	Aesthetics and Recreation	18
4.6	Public Services, Taxes, and Community.....	19
4.7	Cumulative Effects	20
5.0	Resources Considered but Eliminative from Detailed Analysis.....	21
5.1	Land Resources	21
5.2	Air Quality.....	21
5.3	Noise and Utilities.....	21
5.4	Risk and Health Hazards.....	22
5.5	Cultural and Historic Resources.....	22
6.0	Need for an Environmental Impact Statement	22
7.0	Public Participation	22
7.1	Public Involvement	22

7.2	Comment Period.....	24
7.3	Approximate Timeline of Events	24
7.4	Offices & Programs Contributing to the Document.....	24
8.0	EA Preparers.....	24
	References	24
	Attachments:.....	25

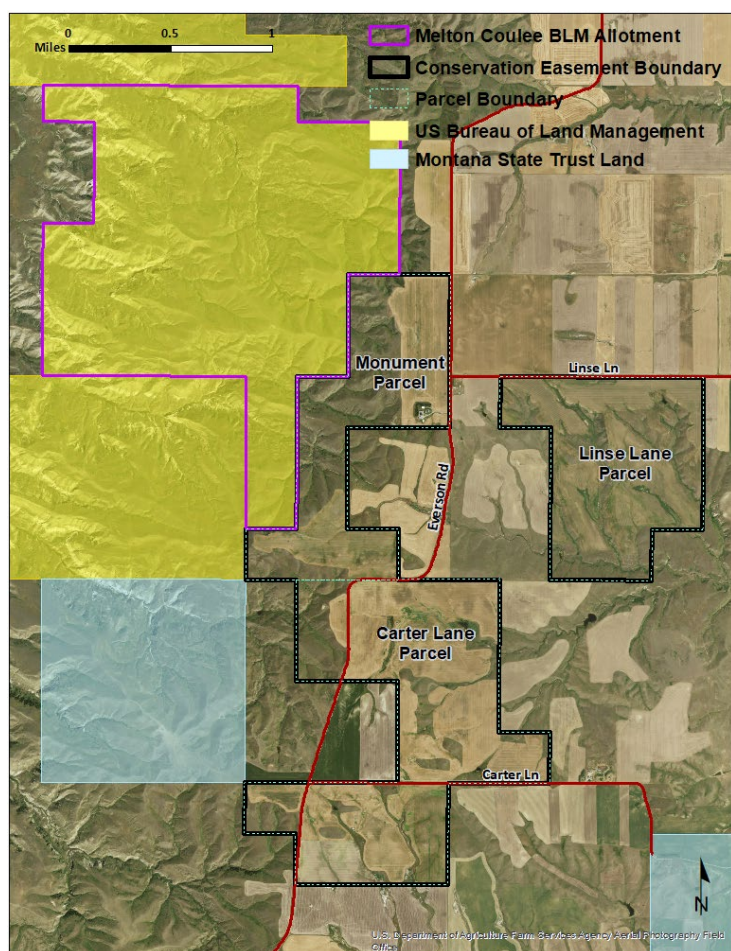
1.0 Purpose of and Need for Action

1.1 Proposed Action

Montana Fish, Wildlife & Parks (hereafter, “MFWP” or “the Department”) proposes to purchase a perpetual Conservation Easement (CE) to protect wildlife habitat and ensure continued public access on lands owned by Keith and Runsigma Glass (hereafter, “Landowner(s)” or “the Land”). The proposed Everson Bench CE encompasses 1,733 acres comprised of farmground and big sagebrush steppe/mixed-grass prairie. The proposed easement is located in west Fergus County, approximately 12 miles northeast of Denton in deer/elk Hunting District (HD) 426, at the junction of Arrow and Coffee Creeks (Figure 1). It is comprised of three parcels and has an associated 1,506-acre BLM grazing lease.

The Landowner approached MFWP to perpetually conserve the agricultural and wildlife values of the property, as well as ensure permanent public recreational access on the Land and to adjoining public lands through a CE.

Figure 1. The proposed Everson Bench CE, associated BLM allotment, and parcel delineations.



Conservation easements are voluntary, binding agreements between a landowner and another entity, in this case, MFWP, wherein MFWP purchases certain uses (rights) of the land in order to protect its conservation values. The Deed of CE is recorded at the County Courthouse and remains with the property in perpetuity. Developing and implementing CEs require ongoing partnerships between MFWP and willing private landowners with the primary intent of conserving important native wildlife habitats and providing free public recreational access, while keeping the land in private ownership and agricultural production. Provisions in the proposed Everson Bench CE such as prohibiting subdivision, development outside of identified building areas, expanded tillage, or other activities destructive to native vegetation (currently farmed lands are permitted to remain under production), would help maintain the Land's conservation values in perpetuity.

Montana Fish, Wildlife & Parks CEs only encumber private lands. At the time of this easement, the Landowner leases 1,506 acres BLM lands (Melton Coulee Allotment) adjacent to the CE. No changes to the allotment grazing permit associated with this CE are proposed at this time.

1.2 Need for Action

This CE ties well into the mission, goals, benefits, and application of MFWP's Habitat Montana Program as stated in ARM Rule 12.9.508 through 511. It consists of approximately 1,733 deeded acres situated along Everson Bench, an expanse of relatively gently topographic, fertile agricultural and sagebrush-grasslands juxtaposed with the steep badlands of the Coffee and Arrow Creek Breaks. The Land provides good mule deer and upland game bird habitat. Elk are also expanding into this area as their populations in HDs 471 and 426 continue to increase. There are several known sharp-tailed grouse leks on the proposed CE, which also includes brood-rearing and nesting habitat. The proposed CE is also located within the State Wildlife Action Plan (SWAP) 2015 Arrow Creek and Judith River Terrestrial Focus Areas.

Roughly 42% of the lands within a 20-mile radius of the proposed Everson Bench CE have been developed or converted to cropland/hayground. These land-use changes have occurred primarily on private lands. Cultivation or tillage of native vegetation is one of the biggest land-use changes affecting native species in central Montana. The proposed Everson Bench CE will protect the native vegetation from further conversion or other development.

The Arrow Creek breaks are highly valued for hunting and recreational pursuits due to the exceptional habitat values for deer, elk, pronghorn, upland game birds, numerous non-game species, and its historical significance (referenced as "Slaughter Creek" in Lewis and Clark's journals). Most of the lands within the Arrow Creek breaks are publicly administered by the BLM within the confines of the Upper Missouri Breaks National Monument (UMBNM), designated in 2001 to protect the area's wild, scenic, and historic character. Department Natural Resources & Conservation (DNRC) School Trust also administers some of these public lands. The mouth of Coffee Creek, accessible by this property, is also largely public land (BLM). Although predominantly public land, this area is inaccessible to the public—it is land-locked by private land with no legal rights-of-way into the area. In 2010, MFWP purchased a CE from Moline Ranch, approximately 6 miles northwest of this proposed CE, which provides public access to a portion of the Arrow Creek Breaks. About 9,000 acres (8,230 BLM plus 960 DNRC)

remains inaccessible to any guaranteed public hunting or recreational use in this area. Acquisition of a CE on the Land would provide public access to these 1,733 deeded acres and approximately 9,000 public lands acres, while ensuring protection of the habitat values of the deeded lands in perpetuity.

In 2003, MFWP's comments to the proposed UMBNM Management Plan stressed the importance of maintaining and/or enhancing public access to lands within the monument boundary—"excepting river floaters and during hunting season, most of the UMBNM receives comparatively little visitation in part due to limited public access". This proposed CE is an opportunity for MFWP gain public access to a unique area of UMBNM lands.

Additionally, the project falls within Priority Area D (which includes Fergus County) of Montana's State Action Plan to protect big game migration routes and winter ranges (particularly for pronghorn, mule deer, and elk) in response to Secretarial Order (SO) 3362.

Funding for the easement would come from MFWP's Habitat Montana Program, the Montana Access Public Lands Program, and the Great Falls Chapter of Safari Club International. No tax dollars are associated with the purchase of this easement.

1.3 Location

The Land's southernmost portion lies approximately 13 miles northeast of Denton, Montana, 31 miles northwest of Lewistown, Montana, and 24 miles west-southwest of Geraldine, Montana, in Township 20N, and Range 15E, and Sections 03, 10, 11, 12, 14, 15, and 22 (Figure 2). The parcel provides legal access to an adjoining 8,230 acres BLM and 960 acres DNRC lands.

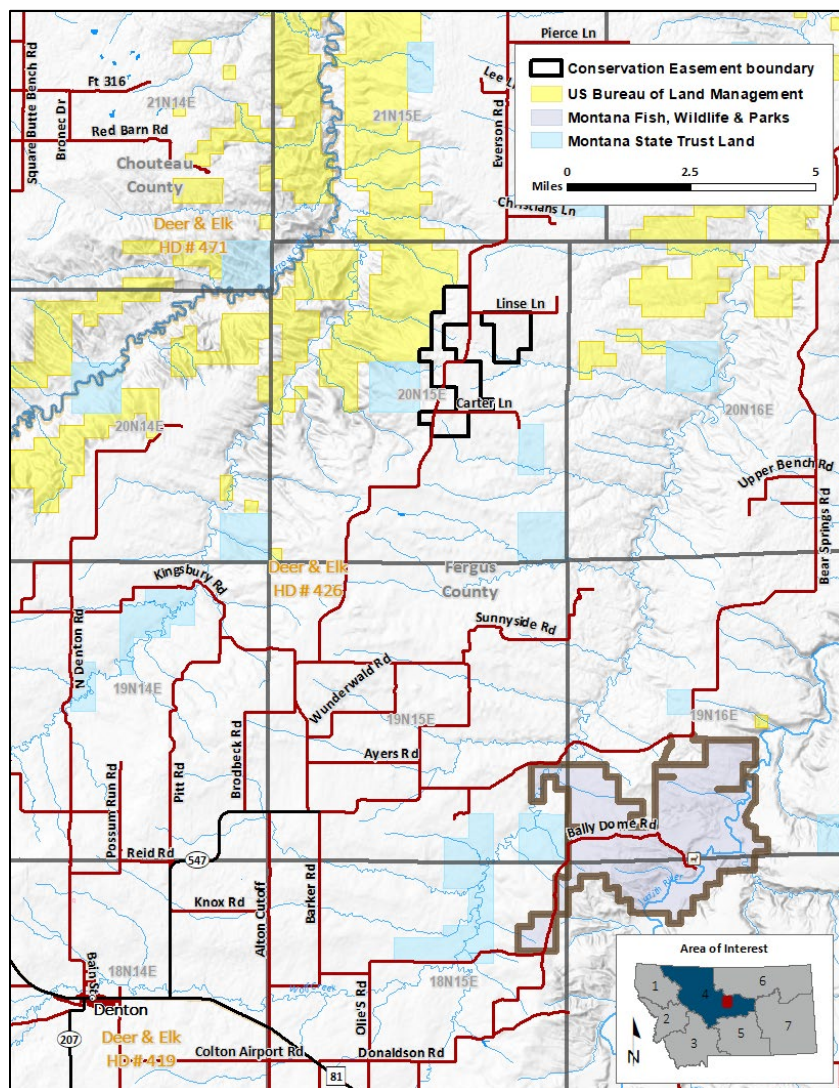
1.4 Relevant Authorities

The following laws and rules are applicable to the proposed action:

- Montana Fish, Wildlife & Parks is authorized by Montana Code Annotated (MCA) § 87-1-201 to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future.
- Montana Fish, Wildlife & Parks has the authority to acquire land or interests in land (MCA § 87-1-209) that are suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; for public hunting, fishing, or trapping areas; and for state parks and outdoor recreation.
- State statute MCA § 76-6-201 through 204 authorizes the use of CEs, to protect "open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest," and describes the duration and permissible types of easements.
- State statute MCA § 76-6-206 provides for the review of proposed CEs by local planning authorities to determine compliance with local growth policies. The proposed Deed of Conservation Easement would be submitted to Fergus County for its review in accordance with this requirement.

- The Habitat Montana program authorized by MCA § 87-1-241 (accompanying regulations found at Administrative Rules of Montana 12.9.509) seeks to conserve Montana’s wildlife populations and natural ecological systems by earmarking hunting license revenues for lease, CE, or fee-title acquisition. Habitat Montana projects are also intended to: 1) conserve land, water, and wildlife; 2) contribute to hunting and fishing opportunities; 3) contribute to non-hunting recreation; 4) protect open space and scenic areas; 5) promote habitat-friendly agriculture; and 6) maintain the local tax base through continued payments of property taxes.
- The Montana Access Public Lands Program, also known as the “Home to Hunt” program, is established through MCA § 87-2-526, which provides a license for a nonresident to hunt with a resident sponsor or family member. Funds from the sale of these licenses are deposited in a separate account and used by the department to acquire public hunting access to inaccessible public land.

Figure 2. Location of the proposed Everson Bench Conservation Easement.



1.5 Relevant Plans

2005 FWP Comprehensive Fish & Wildlife Management Strategy:

Montana's Comprehensive Fish & Wildlife Conservation Strategy (CFWCS 2005) was drafted in response to a charge by Congress for states to develop a comprehensive assessment of their fish, wildlife, and habitats for the purposes of prioritizing State Wildlife Grants (SWG) funding. Its priority is to describe those species and their related habitats that are in "greatest conservation need"—interpreted as focus areas, community types, and species that are significantly degraded or declining, Federally listed, or where important distribution and occurrence information to assess species' status is lacking.

The entirety of the Everson Bench CE boundary falls within a Tier I Focus Area (Montana Glaciated Plains; CFWCS 2005). The Montana Glaciated Plains are primarily level to rolling plains dominated by sagebrush grasslands and mixed short-grass prairie and cropland. The main natural disturbances to this area include drought and fire, while livestock grazing and dryland farming are the primary land uses.

Species of Greatest Conservation Need (SGCN; also called Species of Concern) that inhabit or possibly inhabit the Land include: Great Plains toad, plains spadefoot, Baird's sparrow, bobolink, Brewer's sparrow, burrowing owl, Cassin's finch, chestnut-collared longspur, ferruginous hawk, golden eagle, greater sage-grouse, green-tailed towhee, loggerhead shrike, long-billed curlew, McCown's longspur, mountain plover, peregrine falcon, Sprague's pipit, black-tailed prairie dog, dwarf shrew, fringed myotis, Merriam's shrew, Preble's shrew, swift fox, greater short-horned lizard, milksnake, and western hog-nosed snake.

2015 State Wildlife Action Plan:

Montana's State Wildlife Action Plan (SWAP), updated in 2015, further identifies specific focal areas within the state that contain the terrestrial CTGCN, as identified by the 2005 CFWCS. The Land's location within the Northwestern Great Plains ecoregion contains three identified CTGCN: Sagebrush Steppe/Sagebrush-dominated Shrubland, Lowland/Prairie Grassland, and Riparian and Wetland. These Tier I Community Types have a low or declining status and efforts for conservation should be extended to and beyond the focus areas addressed in the CFWCS (Figure 3). In addition to these Tier I Community Types, the proposed Everson Bench CE straddles two SWAP Terrestrial Focal Areas, the Arrow Creek and the Judith River Focal Areas (Tier II).

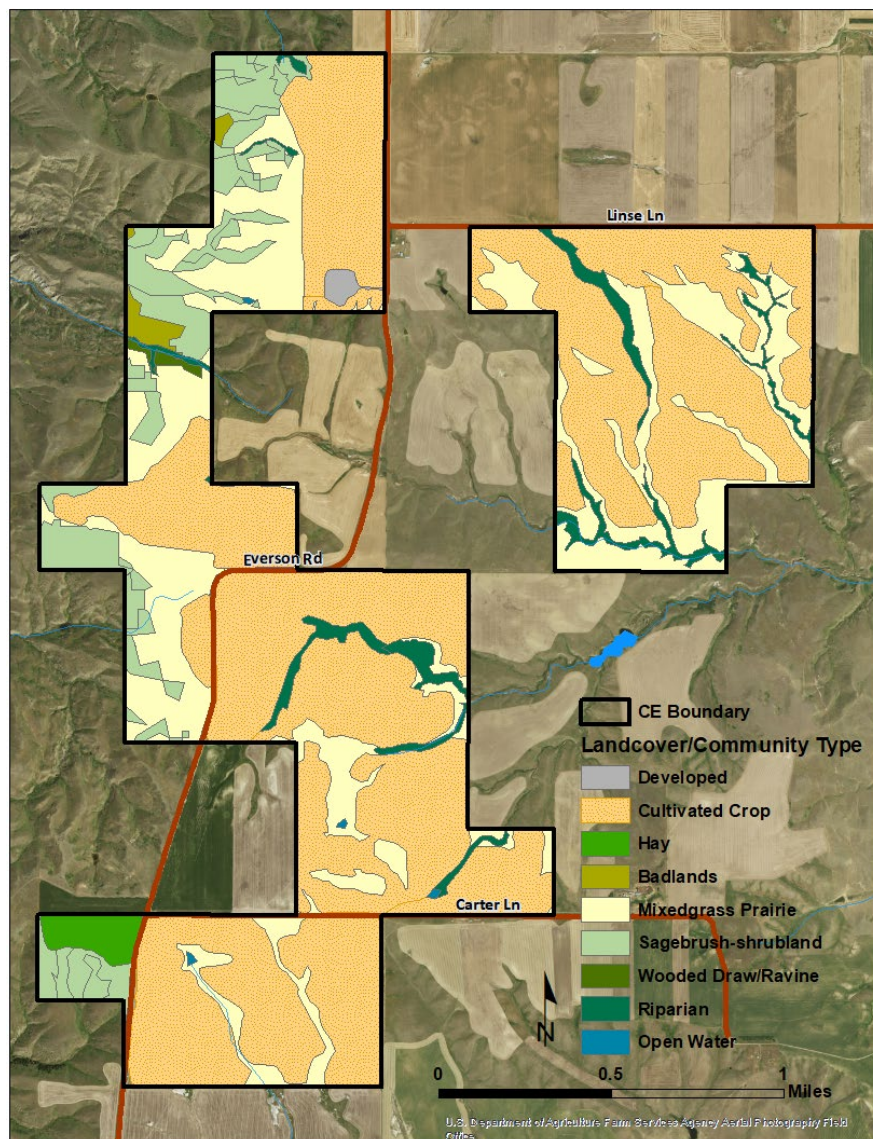
Prairie Grassland: This is the most dominant native community type on the proposed Everson Bench CE, making up 23% of its total landcover. This is a prevalent system east of the Continental Divide. High grass canopy cover and high forb diversity are characteristic of this community type. The dynamics of Prairie Grassland communities are primarily a function of climate, but the magnitude of changes that can occur is influenced by grazing intensity and fire frequency. Plant productivity, distribution, and species richness are a product of environmental conditions (the temporal and spatial distribution of soil moisture and topography).

Sagebrush-dominated Shrubland: This is another native community type on the proposed Everson Bench CE, making up 10% of its total landcover. The primary sagebrush species found

here are Wyoming big sagebrush (*Artemisia tridentata* spp. *wyomingensis*) and Silver sage (*A. cana*). In many parts of this community's range, overgrazing has put these areas in a disclimax condition. Fire has a negative effect on this area due to the sensitivity of sagebrush to fire, and cheatgrass (*Bromus tectorum*) invasion tends to occur in areas where perennial grasses and forbs have been stressed or reduced.

Riparian and Wetland: This community type is found throughout Montana and varies greatly across the state, but common to all. The quality and quantity of water input into riparian areas depends entirely on the surrounding landscape. Riparian areas form important links between terrestrial and aquatic systems and like prairie streams, provide important habitat for a variety of species. This system manifests itself on the Everson Bench CE via seeps and small wet depressions snaking across the three parcels. Unmanaged cattle grazing can affect the propensity of beneficial perennial grasses or inhibit the health and restoration of hydrology in these systems.

Figure 3. Community types on the proposed Everson Bench CE.



2018 Montana State Action Plan for the Department of the Interior’s Secretarial Order 3362:

The need to identify and protect big game migration corridors and winter range has recently received focused attention across the western United States. In 2018, former Secretary of the Interior Ryan Zinke signed SO 3362, fostering collaboration between the federal government, states, and private landowners to improve winter range and migration corridors for mule deer, elk, and pronghorn. In response to SO 3362, MFWP drafted the State Action Plan which identifies four areas within the state as priority big game winter range and migration corridors. Priority Area D, Canadian Border to the Musselshell Plains, encompasses the proposed CE. The swath of land included in this area, as well as the proposed CE, receives annual use by elk, mule deer, and pronghorn—including winter ranges, possible migration stopovers, and fawning/calving habitats.

1.6 Decision to be Made

The decision to be made is whether MFWP should move forward with the proposed purchase of a CE on the 1,733-acres from Keith and Runsigma Glass, as delineated in Figure 1. Following completion of the draft environmental assessment (EA) which includes a 30-day public review and comment period, the MFWP Region 4 Supervisor will issue a Decision Notice which provides a recommendation to the Fish and Wildlife (F&W) Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives based on public input.

As with other MFWP CE projects, the F&W Commission makes the final decision. This draft EA and the public comments received are part of the decision-making process.

2.0 Alternatives

2.1 Alternative A: Proposed Action, purchase the proposed Everson Bench Conservation Easement.

The Department would purchase a CE on the approximately 1,733-acres for the protection of fish and wildlife habitats. The anticipated purchase price of the CE would be \$640,000. Funding for the CE would come from MFWP’s Habitat Montana Program, the Montana Access Public Lands Program, and the Great Falls Chapter Safari Club International. An independent appraisal valued the CE at \$967,500. The Landowner would donate the difference in value between the purchase price and appraised value, approximately \$327,500. While agricultural lands can provide important wildlife values, MFWP values native habitats over non-native habitats when assessing and valuing CEs. This donative value also accounts for the relative high proportion of cropland on the property; MFWP generally does not pay full CE value for nonnative habitats. Anticipated monitoring costs of the CE by MFWP staff is estimated to be \$200 annually. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses and Montana Access Public Land funds are derived from the “Home to Hunt” license earmark. No general fund tax dollars would be used toward the purchase of this CE.

Under the terms of the Deed of Conservation Easement, each party would retain or receive the following rights. See Attachment A for a copy of the Draft CE for further specification of these rights. Keith and Runsigma Glass, or future landowners (hereafter, "Landowner(s)), " would retain the rights to:

1. Raise, pasture, and graze livestock, and to lease pasture to another agricultural operator to raise, pasture, and graze livestock, provided that any livestock grazing maintains the Land's Conservation Values. For the purposes of this easement, "livestock" is defined as cattle. Livestock can be reclassified upon mutual agreement between the Landowner and MFWP. As is the case with other private lands, class of livestock to be grazed is often at the discretion of the private landowner. On an MFWP CE, classes of livestock allowed would be those that do not threaten the Conservation Values of the CE;
2. Use the Land and use equipment on the Land for agricultural purposes on and to manage habitat for wildlife on previously cultivated lands;
3. Lease the Land to another agricultural operator for agricultural purposes;
4. Conduct fish and wildlife habitat restoration and enhancement projects;
5. Use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, domestic use, and all agricultural purposes that are allowed by this Easement;
6. Construct or maintain up to two single-family residences and associated non-residential improvements necessary for agricultural purposes in each of three allotted Development Areas: one of 40 acres on the Monument Parcel and two of 10-acres each on the Carter Road and Linse Lane Parcels as noted in Exhibit D of the Draft CE;
7. Construct, remove, maintain, renovate, repair, or replace fences necessary for generally accepted agricultural activities;
8. Construct new and maintain existing roads and bridges or waterway crossings in connection with farming or ranching;
9. Use the Land for noncommercial recreational purposes;
10. Maintain, renovate, repair, or replace utilities existing on the Land;
11. Construct wind, solar, hydropower, and other types of renewable energy generation facilities solely for uses on the Land with Prior Approval;
12. Use agrochemicals for control of noxious weeds as defined by the State of Montana or other lawful authority with jurisdiction;
13. Regulate public use at all times, subject to the public's recreational and hunting access described in the terms of the Easement;
14. Explore for and extract oil and gas in, on, or under the Land only if such activity would not harm or interfere with the Land's Conservation Values, is conducted by subsurface methods, does not occur within wetland or riparian areas, is limited, localized, and temporary, and no refinery or secondary production facility is located on the Land. Third party interests in the oil, natural gas, or other mineral substances not subordinated to the Easement are not subject to the terms of the Conservation Easement and for any such exploration or exploitation the Department and Landowner shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures.

15. Grant, sell, donate, bequeath, or otherwise convey the Landowner's right, title, estate, and interest in the Land in up to three parcels, the boundaries of which are identified in Exhibits A and B of the Draft CE, separately or together.

The proposed CE would prohibit the removal or destruction of riparian or native rangeland vegetation, manipulation of riparian and wetlands areas, transfer of existing water rights, renting or leasing of the parcels for commercial recreation (e.g., outfitting businesses, trespass fees), granting of utility easements that are inconsistent with the terms of the CE, establishment of commercial feedlot or alternative livestock businesses, and processing and disposal of hazardous materials. In addition, the Landowner would be prohibited from exploring for, developing, mining, producing, or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources that they own on or under the surface of the project parcels, except as stated in Section II.C.12.b of the CE.

The Department would acquire the rights to:

1. On behalf of the general public, access by non-motorized means from public roads and rights-of-ways, and identified parking areas for the purpose of hunting, wildlife viewing, and other recreational activities in accordance with the terms of the CE;
2. Construct and maintain parking areas and vehicular access to the parking areas as shown in Exhibit C of the Draft CE;
3. Enter the parcel to monitor compliance of the CE terms and rights to observe, study, and make scientific observations of the Land's fish, wildlife, habitat, and ecosystems upon prior notice to the Landowner;
4. Use the Land for residential purposes other than in the three defined residential development areas (Attachment A, Exhibit D);
5. Further subdivide the property outside of the three allotted parcels as identified in the Draft CE;
6. Cultivate previously uncultivated lands.

2.2 Alternative B: No Action and no purchase of the proposed Everson Bench Conservation Easement.

For the No Action Alternative, MFWP would not purchase a CE on the Land. The Landowner would likely sell a portion (or all) of the property to an interested party in the near future. In the future, the potential for the Land to remain in its current state, or the possibility for public access to or across the property, would be uncertain and unlikely. Access to the adjoining public lands would not be guaranteed without this CE.

3.0 Affected Environment

3.1 Land Use

The Land is managed using generally accepted agricultural production practices, and primarily in winter- and spring-wheat production. Currently no livestock grazing occurs on the Land, but it is not prohibited under the terms of this CE.

One single-family dwelling with associated outbuildings exists on the Land (Monument Parcel). This area is one of three Development Areas permitted on the CE and is approximately 40-acres in size. The remaining two residential Development Areas would include one each on the Linse Lane and Carter Road parcels, up to 10-acres in size. Locations for each designated Development Area are depicted in the CE document (Attachment A, Exhibit D).

3.2 Habitat

Of its 1,733 private acres, the proposed Everson Bench CE consists of approximately 628 acres native vegetation and 1,098 acres non-native vegetation, or 36% and 64%, respectively. While the majority of land within the proposed Everson Bench CE boundary is tillage agriculture, its juxtaposition along the sagebrush grasslands and badlands/breaks habitats and its riparian seeps snaking through it to the east provide ideal seasonal habitat conditions for the above-mentioned species.

The area is considered general and winter range for a variety of big game species which inhabit or move through the property on a regular basis, including mule deer, elk, pronghorn, sharp-tailed grouse, and a variety of small mammals and other nongame species. The Land also provides seasonal habitat for waterfowl, mourning doves, migratory raptors, and passerine birds.

The Land's native range consists of big sagebrush steppe/shrubland and mixedgrass prairie dominated by Wyoming big sagebrush and western wheatgrass (*Pascopyrum smithii*), but bluebunch wheatgrass (*Pseudoroegneria spicata*), intermediate wheatgrass (*Thinopyrum intermedium*), green needlegrass (*Nassella viridula*) and prairie junegrass (*Koeleria macrantha*) are also prevalent in this system. Common forb species include Hood's phlox (*Phlox hoodii*), prickly pear (*Opuntia spp.*), scarlet globemallow (*Sphaeralcea coccinea*), yarrow (*Achillea millefolium*), and fringed sage (*Artemisia frigida*). The non-native range is largely in winter- and spring-wheat production. Under the Lands's current management system, the native range vegetation is considered in good condition.

3.3 Terrestrial Species

Primary game/furbearer species inhabiting the proposed Everson Bench CE include mule deer, elk, pronghorn, and sharp-tailed grouse, pheasant, and Hungarian partridge. The Land also hosts a variety of raptors, songbirds, reptiles, amphibians and small mammals, including a wide range of identified SGCN, as listed in Section 1.5 above.

Current ungulate population estimates range from 300-1,000 mule deer and pronghorn in the immediate area, depending on season and circumstance. Antelope numbers will be higher during the winter as some migrate through the area. Roughly 50-100 elk are observed annually in the Coffee/Arrow Creek drainages; this population is growing.

Additional common species that are likely permanent or seasonal residents of the Land include: coyote, red fox, badger, red-tailed hawk, rough-legged hawk, short-eared owl, vesper sparrow,

field sparrow, assorted waterfowl, other passerines, prairie rattlesnake, and numerous small mammals.

Game damage has not been a concern in the immediate vicinity of the Land, however, elk are expanding in number, resulting in elk-related game damage complaints throughout HD 426. Mule deer and pronghorn game damage issues have recently arisen south of the proposed CE.

3.4 Fisheries Species and Water Resources

The headwaters Melton Coulee and Birkland Coulee, tributaries of Coffee Creek, and Buffalo Coulee and Black Butte Coulee, tributaries of Wolf Creek are included within the boundaries of the Land. These creek portions are ephemeral and not known to sustain fisheries.

3.5 Recreational Opportunities

Hunting via landowner permission has traditionally occurred on the Land, and last year (2019), the Landowner enrolled in MFWP's Block Management Program, receiving approximately 543 hunter days of use. With this CE, MFWP would purchase the right, on behalf of the general public, of access, for hunting, wildlife viewing, and other non-motorized recreational activities on and across the Land and to adjacent public land (see Attachment B, Appendix A, for the access map and rules).

A minimum of 350 hunter days, not to include recreational use outside hunting season, would be provided (when demand exists) on the proposed Everson Bench CE. If at some point in the future the three parcels have different landowners, hunter days would be allocated as follows: 150 hunter days on the Monument Parcel, 100 hunter days on the Linse Lane Parcel, and 100 hunter days on the Carter Lane Parcel.

Additionally, unfettered access across the Monument Parcel would be provided to the adjacent public lands via one parking area (this access may be closed or restricted to comply with closures or restrictions enacted upon the public lands for fire danger). A CE on the Land does not prohibit the Land from being eligible for continued enrollment in Block Management. Per program statute, payments through the Block Management Program help offset hunter impacts to the Land, which is complementary to MFWP's CEs that also include public access requirements. As long as the Land is enrolled in Block Management, hunting access would be managed through that program; should the property not be enrolled in Block Management, a mutually agreed-upon means of hunter access would be established and detailed in the Management Plan.

Several neighboring landowners expressed concerns during the public scoping process about public access to adjacent public lands, some of which they are the lessees. These comments included concerns about increased trespassing with increased access to UMBNM lands, and whether the public should have access to these public lands without notification of the adjacent landowners/lessees.

While the proposed Everson Bench CE would provide access to public lands, neither the CE nor MFWP have any part in regulating public land use under jurisdiction of other agencies.

Additionally, 43 CFR Subpart 4100 (Code of Federal Regulations) regarding grazing permits or leases states that grazing permits/leases convey no right, title, or interest in said lands. BLM lands are managed in a manner consistent with multiple use, which includes livestock grazing, and public recreational access to include hunting, among others. Outside of allowing public access across private property to access public lands, landowners have no legal rights to control/limit other legal means of access to public lands. Similarly, it is illegal for individuals to trespass on private property without landowner permission or vandalize private property—a CE on the Land does not permit these illegal activities. The current Landowner has the right, as does any landowner, to allow access across their private property to adjacent public lands regardless of whether or not the Land is encumbered by a CE.

4.0 Predicted Environmental Consequences

4.1 Land Use

Proposed Action:

If the proposed Everson Bench CE were approved, there would be no impact to the productivity or profitability of the Land. The current uses of the Land would be maintained under the terms of the proposed CE.

The terms of the CE do prohibit some land management practices, such as no tillage of remaining native vegetation, or subdivision/development outside of what is permitted in the CE.

The proposed CE would serve to protect, conserve, and propagate wildlife by perpetually conserving the natural habitats, providing for the continuation of agricultural operations and maintenance of public recreation on private lands and adjacent public lands.

No Action:

If the proposed Everson Bench CE were not approved, current management of the Land would remain unchanged in the near future. However, this no action alternative could potentially result in substantive changes if the Land is sold—land use practices that may negatively impact wildlife habitat quality and sale of the Land would provide no guarantee for public recreation on or through the Land.

4.2 Vegetation

Proposed Action:

This proposed action would result in a positive impact to vegetation resources on the Land. The terms of the CE would protect the quantity, quality, and character of the native plant communities found on the Land.

Many shrub species are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub species important to wildlife by any means would be prohibited within the terms of the CE unless such activity is mutually agreed upon by the Landowner and MFWP.

These prohibitions do not apply to the routine clearing or control of brush in connection with the construction and maintenance of roads and fences permitted under the CE.

The proposed action would also ensure the Land's primary use in the future would be agriculture that is compatible with or even enhances wildlife habitat, and public recreation, both of which depend on maintaining productive vegetation. The Department would be responsible for establishing a Baseline Inventory Report that would document wildlife habitat, plant communities, roads, fences, and water developments that would serve as a reference for future monitoring. Additional vegetation photo points and other monitoring plots may be established and maintained by MFWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

Public scoping comments concerned noxious weed spread as a result of increased hunter activity. As stated in 2.1, the Landowner retains the right to control noxious weeds on CE lands and parking areas will be monitored and sprayed for noxious weeds on an annual basis. Noxious weeds on adjacent public lands are controlled by those respective lessees. Cattle and wildlife also spread weed seeds; it is unlikely that foot traffic from hunters and outdoor recreationists would lead to significantly more weed dispersal than what currently occurs via cattle and wildlife.

No Action:

Without protection of the quantity, quality, and character of the native plant communities found on the property, there would likely be no change in the short term if the property was maintained under the current operating framework. However, if the Land were sold, there would be no conservation assurances in place to maintain the productivity of the Land, and additional conversion of native habitats to tillage agriculture or other development and disturbance may occur. Additionally, instead of agriculture working in balance with the needs of wildlife, the property may be managed to maximize economic benefit. Future impacts to native vegetation and overall productivity of the Land could be considerable and potentially detrimental to wildlife if any significant changes to land uses occurred.

4.3 Fish and Wildlife Resources

Proposed Action:

The proposed Everson Bench CE would ensure long-term benefits to a variety of wildlife. The terms of the CE conserve and protect the Land as agricultural and open space to provide year-round and seasonal habitat for many of Montana's wildlife species. Conserving native plant communities is important for most of Montana's indigenous wildlife species; protection from subdivision would ensure adequate quantity and quality of forage and cover as well. No adverse effects are expected on the diversity or abundance of game species, non-game species, or unique, rare, threatened, or endangered species.

Wild game populations fluctuate over time and may periodically exceed MFWP management objectives, thus contributing to above-average wildlife use of the Land, resulting in game damage problems. Such circumstances on the Land would be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts would be provided on an "as needed" basis to the Landowner.

Any new fence construction would follow the guidelines described in Attachment B, Appendix B (Landowner's Guide to Wildlife Friendly Fences) to ensure the fences do not impede wildlife movements (particularly antelope) within and through the Land.

During the public scoping process, concerns were raised regarding increased hunter access to adjacent BLM lands and resultant possible impacts to local wildlife populations. Comments also expressed that the Everson Bench CE would not reduce the HD 426 elk population to objective and noted that no bull elk were harvested using the 426-20 elk permit; thus the 2019 hunting season was unsuccessful on the Everson Bench BMA. MFWP applauds landowners for their stewardship of fish and wildlife resources on deeded lands, as well as the public land management agencies that maintain productive fish and wildlife habitat on public lands. The proposed action would ensure public access to the CE lands in perpetuity. Hunting and other non-motorized recreation on CE lands would not negatively impact the overall distribution and population of game species in the area. The seasonal take of game species would continue to be evaluated on an annual basis by MFWP biologists, with quota recommendations being submitted to the Fish & Wildlife (F&W) Commission annually and season structures biennially during hunting season-setting process(es). The purpose of the Everson Bench CE does not entail reducing elk to objective numbers; it entails protecting the Conservation Values of the Land and providing perpetual hunting/recreational access to the public. Finally, whether or not a certain license/permit type is filled on a given property is not a measure of overall harvest success. At least one bull was harvested on the Everson Bench CE using the 900-20 archery permit, which has a lower % success rate than the rifle permit.

No Action:

In the absence of a CE, there would likely be no change in the short-term if the Land remains under its current ownership. However, if there were a change in ownership, there would be no provisions preventing development for recreational purposes or changes in land use that could be detrimental to wildlife species in the future.

The selection of the No Action Alternative could also allow future landowner(s) to close the Land to public recreation, which would result in a lack of valued access to natural habitat and to adjoining BLM and State Trust lands. Without the CE, the Landowner could increase farmed areas and diminish the native habitat values of the Land.

4.4 Water Resources

Proposed Action:

Current agricultural uses on the Land have proven to be compatible with maintenance of water quality. If the proposed CE were implemented, this trend is likely to continue.

No Action:

There would likely be no impact in the short-term under the No Action Alternative. However, if the Land was developed or sold without CE protection, there would be no assurances that over time the use of the parcels would not affect water resources and their associated areas (e.g., riparian and wetland).

4.5 Aesthetics and Recreation

Proposed Action:

Implementing the Everson Bench CE would provide year-round public recreational opportunities (hunting, hiking, wildlife viewing, etc.) on and across the Land in perpetuity. All permitted activities would be walk-in only (non-motorized) via designated parking areas. Camping is also permitted on the Everson Bench CE with landowner permission (see Attachment B, Appendix A).

Because the Land has already been enrolled in Block Management (Everson Bench BMA), the level of public hunting would likely stay the same as is. Hunting would continue to be allowed on the Everson Bench CE consistent with F&W Commission-established regulations and dates/seasons. Additional forms of recreation (e.g., hiking, wildlife viewing) may increase use of the area, but is not expected to be significant.

The terms of the CE would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting or other recreational activities on the Land or to adjacent public lands.

The terms of the CE would protect scenic values in perpetuity from land uses that could diminish them, including open space, native vegetation, wildlife, and sustainable agricultural land uses, while prohibiting subdivision or further residential development outside the three permitted building envelopes allotted on the property.

The public scoping process raised concerns regarding cultural resources—whether a cultural resource inventory of the area had been completed and concerns about potential theft of cultural resources and artifacts as a result of public access to adjacent BLM lands as a result of this CE. One commenter described finding dinosaur bones and other artifacts on the BLM lands adjacent to the proposed Everson Bench CE. The National American Graves Protection and Repatriation Act and *Southern Utah Wilderness Alliance vs. the Department of the Interior (DOI)* were used as examples of why cultural resources needed to be inventoried on public lands in this area.

The proposed Everson Bench CE encumbers and addresses deeded private lands only; while the current Landowner allows access across the Land and a CE will guarantee perpetual access to the adjacent public lands, MFWP does not have jurisdiction over public use of BLM and/or DNRC lands. That being said, regarding the dinosaur vertebrae and other cultural artifacts, collection of these items is not allowed on UMBNM lands. The BLM would appreciate location information and return of such items found on Monument lands. In 2008, the BLM completed cultural resource inventory on 3,392 acres of Monument land along Arrow Creek in the vicinity of this proposed CE. The National American Graves Protection and Repatriation Act does not apply to all artifacts, only those associated with graves and funerary objects—it does not apply to fossils unless they are in a funerary context. Finally, *Southern Utah Wilderness Alliance v. DOI* in the 10th Circuit (2016) was in regard to a federal action, specifically travel management in their resource management plans' this proposed CE is not a federal action and the case has no bearing on this proposed CE.

Another public scoping comment concerned increased traffic along Everson Road and potential trespassing, littering, road-hunting, and wear-and-tear to the county road.

Regarding trespassing and/or illegal activity, it is the responsibility of the hunter to know where they are at on the landscape and to have permission on/or across private lands. A violation-reporting hotline, 1-800-TIP-MONT, exists for members of the public (including landowners) to report violations. Trespassing can also be reported to the county sheriff's office. Throughout the 2019 hunting season, Lewistown-area game wardens received no calls or complaints originating from the Everson Bench area. Two TIP-MONT calls originated from this area in Spring 2020, but neither concerned use of the proposed CE or legitimate illegal activity. The purchase of a CE also does not condone littering on CE lands, adjoining lands, or along county roadways. Regarding Everson Road use, the Everson Bench BMA recorded 543 hunter days during the 2019 hunting season (September 1 through December 1), an average of 6 hunters/day (individuals, not vehicles). Likely more traffic occurs on a daily basis along Everson Road, and because the proposed CE lands are not expected to receive substantially more traffic than what has been experienced through the BMA program, this level is comparable to existing public uses. Additionally, the current Landowner, as well as any other landowner, may allow hunters and/or recreationists on and through their property without being enrolled in Block Management or encumbered by a CE, which would lead to increased county road use. Fergus County is responsible for maintenance and repair of county roads.

No Action:

In the short term and if the property remains under current management, recreational opportunities and the scenic values would remain unchanged.

However, if the CE is not completed and the ownership or land management changed, hunting and public access on this Land could be restricted or nonexistent in the future, thereby failing to improve recreational opportunities in the area. There would be no guarantee of public access to the Land or across the Land for recreational purposes. If rural subdivision and/or other developments or expanded tillage would occur, it could change or reduce the existing scenic, recreational, and habitat values of the area.

4.6 Public Services, Taxes, and Community

Proposed Action:

Under the Proposed Action Alternative, the current farming operations would continue in a similar manner—the property's main purpose would be to continue agricultural activities. In addition, neighboring landowners may observe more recreational activities by the public; however, the property has traditionally allowed recreational/hunting access and it has been enrolled in MFWP's Block Management Program for almost two years. Current, existing access to public lands has led to a history of relatively high use of associated county roads. Purchase of a CE would likely have a minimal additional impact upon what is already occurring in the general area. To minimize issues of trespass onto neighboring properties, boundary signs would be posted along the exterior of the Land, and particularly at any problem areas on deeded lands identified by neighboring landowners. Hunters/users would continue to be provided with

maps/rules of the Conservation Easement/Block Management Area. No other impacts to neighboring landowners are expected.

There would be no impact on local or state tax bases or revenues, no alterations of existing utility systems or tax bases or revenues, nor increased use of energy sources. As an agricultural property, the Land would continue to be taxed as it was prior to the CE.

Public scoping raised concerns about neighboring land values and a possible reduction of neighboring land values as a result of the proposed Everson Bench CE. A CE on the Land would not adversely affect neighboring land values. Conservation easement encumbrances apply only to the deeded lands under the CE; according to a land appraiser, independent appraisals on other area lands would not be adversely affected by the proposed Everson Bench CE. Conversely, the open space ensured by this proposed CE would only benefit and contribute to the scenic values across lands in the area.

The terms of the CE would restrict future residential and commercial developments on the Land. Services required from local governments would remain the same. The proposed CE would not impact local employment opportunities or local schools. The addition of public access to the Land could result in increased demand for goods and services from private businesses that support the area, which could result in a modest increase in revenues for these businesses.

No Action:

Identical to the implementation of the Proposed Action, the No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working farm. Future ownership changes could speculatively allow greater potential for changes in land use classifications (e.g., agricultural to recreational) that could increase local property taxes for the county. Also, a change in ownership or land use may lead to subdivision and/or additional residential development, which may be accompanied by higher demand for utilities, roads, and other services that would have to be partially or wholly provided by state and local governments.

4.7 Cumulative Effects

The proposed Everson Bench CE would contribute to the preservation of habitat for the benefit of numerous resident and migratory wildlife species and compatible agricultural values, as well as recreational opportunities for the public. The CE would complement the adjacent public lands (including UMBNM and DNRC Trust Lands), benefiting recreationists with no substantive negative impacts to the local community or related local services. Under the proposed action, land uses on the Everson Bench CE would not change substantially from how the Land has been managed in the past. In evaluating the potential impacts and considering surrounding circumstances and activities, there are no known negative cumulative effects that would result from the proposed action.

Purchase of the Everson Bench CE would result in a habitat conservation outcome and better-facilitated public access. A CE on deeded land would ensure access to adjoining public land in perpetuity. This CE would help retain a traditional farming operation with the associated economic and community values. Other than impacts listed in this EA, no additive or interacting

ties to other circumstances or events in the local area are known at this time. Based on the similar, existing CEs held by MFWP, some of which have been in place for nearly 30 years, the anticipated cumulative effects of the proposed Everson Bench CE are largely positive in nature.

5.0 Resources Considered but Eliminated from Detailed Analysis

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

5.1 Land Resources

Proposed Action:

The proposed CE would ensure that the Land's resources are maintained. Some soil-disturbing activities could occur under normal operations and maintenance to existing facilities. The terms of the proposed CE would prohibit large scale, adverse changes to the existing physical attributes of the Land. Water runoff and erosion would not be exacerbated with the Proposed Action. The soils characteristic of this area are highly-erodible; easement terms prohibiting subdivision and native range conversion would help prevent any further water runoff and erosion than what naturally or currently occurs.

Considering information regarding the probability of minerals resources being located within the Land, the likelihood for subterranean resource development is low.

No Action:

If the proposed Everson Bench CE remained under current management, impacts to the Land's resources are expected to be identical to those described for the Proposed Action. However, if the Land were sold to an alternative operator, disturbance of soils from more intensive agricultural practices, residential development, mineral, or other commercial uses may occur. The No Action Alternative could allow for subdivision and native range conversion, activities which may increase water runoff and erosion.

5.2 Air Quality

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

5.3 Noise and Utilities

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed CE, the

Land would retain the right to maintain, repair, or replace utilities existing on the property. Additionally, the proposed CE would allow for new utilities or utilities leases/right of ways as long as they are consistent with the terms of the CE and have no negative impacts on wildlife species.

5.4 Risk and Health Hazards

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives. No change in pollution levels are anticipated for either the Proposed Action or No Action Alternatives.

5.5 Cultural and Historic Resources

The Proposed Action and No Action Alternatives under current management regime would not cause a change in land use, so MFWP anticipates there would be no impacts to cultural sites. If the Land was sold to an alternative operator, changes in land uses may increase impacts to cultural resources occurring on the Land.

6.0 Need for an Environmental Impact Statement

Based on the significance criteria evaluated in this EA, is an Environmental Impact Statement (EIS) required?

No. The proposed CE would affect approximately 1,733 acres in that it would protect and conserve important wildlife habitat and provide public access in perpetuity with minimal effects (positive or negative) to the current land uses (agricultural) and to the existing natural resources of the property or adjacent lands.

This EA revealed no significant (negative or positive) impacts from the Proposed Action. The significance criteria described in ARM 12.2.431 were used in this determination. Based upon the above assessment, an EIS is not required and an EA is the appropriate level of review.

7.0 Public Participation

7.1 Public Involvement

Prior to the preparation of this draft EA, a formal public participation specific to the proposed purchase of this CE began with a 30-day scoping process. As per MCA 81-1-241 (2), MFWP is required to notify adjacent landowners and interested members of the public. The scoping process represented the first step in the environmental review process, wherein MFWP sent letters to the 12 landowners adjacent to the lands which would be encumbered by this proposed CE. Conservation easements by definition only affect deeded lands on which they encumber; those effects do not extend to neighboring private or public lands.

Copies of the scoping notice were also mailed interested parties and to the Fergus County Commissioners. Additionally, an ad was placed in the Lewistown New-Argus and an MFWP News Release was published inviting the public to participate and providing instructions on how to provide comment.

Montana Fish, Wildlife & Parks received 27 formal comments during the scoping process, as well as fielded questions that did not result in any formal comments. Twenty-one (21) commenters supported MFWP pursuing the proposed Everson Bench CE and six (6) commenters opposed. These comments helped identify specific issues or concerns that have been considered and evaluated in this EA.

In addition to standard components of an EA, MFWP addressed relevant comments as part of this EA.

Public notification of the draft EA and opportunities to comment will be by:

- Two public notices in each of the local papers: *Great Falls Tribune* and *Lewistown News-Argus*
- Direct mailing to adjacent landowners and interested parties;
- Public notice on the MFWP web page: News → Recent Public Notices → Environmental Assessments
- An email to elected officials, governmental agencies, and interested publics;
- A virtual public meeting will hosted via Zoom on November 5, 2020 at 7:00 pm Mountain Time.
 - To join the webinar, participants can go to the following link: <https://mt.gov.zoom.us/j/92485924613?pwd=SCtaOGlUc3dqckpzRW1SRExENkpvdz09>
Passcode: 019913
 - Or iPhone one-tap:
US: +16465588656,,92485924613#,,,,,0#,,019913#
 - Or Telephone:
Dial (for higher quality, dial a number based on your current location):
US: +1 646 558 8656
 - Or login to Zoom with Webinar ID: 924 8592 4613
Passcode: 019913
 - Or an H.323/SIP room system:
H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)
Meeting ID: 924 8592 4613
Passcode: 019913
SIP: 92485924613@zoomcrc.com
Passcode: 019913

Copies of this EA will be available for public review at MFWP Region 4 Headquarters in Great Falls, the MFWP Area Resource Office in Lewistown, and on the MFWP web site (<http://fwp.mt.gov/news/publicNotices/environmentalAssessments/>).

7.2 Comment Period

The public comment period will extend for 30 days beginning October 26. Written comments will be accepted until 5:00 p.m., November 25 and can be mailed or emailed to the addresses below. After public comment is received and reviewed, a Decision Notice will be provided to the public and a recommendation to the F&W Commission for their ultimate approval at their regularly scheduled meeting Dec 10, 2020.

Everson Bench CE c/o Sonja Andersen
Montana Fish, Wildlife, and Parks
Lewistown Area Office
333 Airport Rd
Lewistown, MT 59457

or email comments to: sandersen@mt.gov

7.3 Approximate Timeline of Events

Public Comment Period	October/November 2020
Decision Notice Published	November 2020
Project Submitted to Fish & Wildlife Commission	December 2020
Project Close (pending approval by F&W Commission)	December 2020

7.4 Offices & Programs Contributing to the Document

Montana Fish, Wildlife, and Parks
Martin Balukas, Lands Agent, Helena, MT
Rick Northrup, Habitat Bureau Chief, Helena, MT
Cory Loecker, Region 4 Wildlife Manager, Great Falls, MT

8.0 EA Preparers

Sonja Andersen, Area Biologist, Lewistown, MT

References

Montana Department of Fish, Wildlife and Parks (MFWP). 2005. Montana Comprehensive Fish & Wildlife Strategy. Retrieved from:

<http://fwp.mt.gov/fishAndWildlife/conservationInAction/fullplan.html>

Montana Department of Fish, Wildlife, and Parks (MFWP). 2015. State Wildlife Action Plan.

Retrieved from: <http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

Montana Natural Heritage Program. 2016. Species of Concern Report. Retrieved from:

<http://mtnhp.org/SpeciesOfConcern/?AorP=a>

Attachments:

A. Draft Everson Bench CE

B. Draft Everson Bench CE Management Plan

Appendices: A. Hunting and Public Access Rules & Map

B. A Landowner's Guide to Wildlife-friendly Fences

After Recording, please return to:
Department of Fish, Wildlife & Parks
Land Unit
P.O. Box 200701
Helena, MT 59620-0701

EVERSON BENCH DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this _____ day of _____, 20__, by Keith and Runsigma Glass (“Landowner”), whose mailing address is 808 Broadway, Denton, Montana 59430 to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the Land
- Exhibit B** - Map Identifying the Conservation Easement Boundary
- Exhibit C** - Map Identifying Parking Areas.
- Exhibit D** – Map identifying Development Areas
- Exhibit E** –Water Rights

I. RECITALS

- A.** The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resources of value.
- B.** The Landowner is the owner of certain real property in Fergus County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land is depicted in Exhibit B.
- C.** The Land possesses significant agricultural values and communities of native plants and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.

- D.** The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E.** Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F.** The Land provides important opportunities for public recreational hunting, trapping, and wildlife watching and the Landowner and the Department specifically intend that this Easement afford public hunting for recreational purposes and for wildlife management purposes.
- G.** The Department recognizes that the Land contains important fish and wildlife habitat, including wildlife corridors and connectivity areas ,that is worthy of perpetual conservation and has contributed the funds necessary to acquire this Easement through its Habitat Montana Program, the MT Access Public Lands Program and with partners including The Mule Deer Foundation and the Montana Chapter of SCI.
- H.** The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

II. AGREEMENT

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department's wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

A. PURPOSES

- 1.** The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of plant and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.
- 2.** An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for the recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.

3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowners may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon reasonable prior notice to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and the Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II. B. 5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.
3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Notice** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II. G below.

5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, and wildlife viewing on the Land and across the Land to adjacent public land in accordance with the following terms and conditions:

a. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.

b. When demand exists and upon request by members of the public during the general hunting seasons set by the State of Montana, Landowner must permit a minimum of 350 hunters on and across the Land per year (“hunter days”) on a first-come, first-served basis. If the three parcels which make up the Easement are owned by different owners in the future the 350 hunter days shall be allocated as follows:

Monument Parcel -150 hunter days

Linse Lane Parcel -100 hunter days

Carter Road Parcel -100 hunter days

For purposes of this Easement, the parties agree the general hunting season is the fall hunting season for big game and bird which commonly exists from September 1 to January 1 of the following year. The parties further agree that the general season may be extended or seasons may be added by mutual agreement through the Management Plan.

1. A “hunter day” is defined as one hunter hunting on the Land for one day, or any part of one day, measured from Midnight to Midnight.
2. The Landowner, Landowner’s immediate family, Landowner’s shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating “hunter days.” The term “immediate family” is defined to include spouses, children, in-laws, and parents.
3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
4. The Landowner has the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock.

c. At all times the Landowner must allow members of the public to access public lands adjacent to the Monument Parcel and Carter Lane Parcel by following a path along the northern border of said Monument Parcel. The landowner may not require permission or notification of use under this section, nor shall this access contribute to the hunter days requirement outlined in section IIB5(b) above. This access may be closed or restricted to comply with closures or restrictions enacted on the public lands beyond for fire danger. Landowner may permit additional access by mutual agreement through the Management Plan.

This access point may be relocated by mutual agreement of the parties to another location in the SE ¼ of Section 3 Township 20N Range 15E. Upon such agreement, an exhibit describing the new location of the easement shall be signed by both Landowner and the Department and be recorded in the Fergus County Clerk and Recorder. Until a new access route is so recorded the existing access described in this section shall remain in full force and effect.

- d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
- e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.
- f. Those members of the public who have recreational access to the Land pursuant to this Paragraph II.B.5. shall park in those designated areas referred to as Parking Areas identified for that purpose in Exhibit C attached to this Easement and incorporated herein by this reference. The public may not drive off these designated areas for any purpose, except with the express permission of the Landowner or the Landowner's agent. Upon agreement with the Landowner, the Department may open additional designated roads and parking areas, as allowed for in the management plan. The public may travel on foot from the Parking Areas or from other publicly accessible areas to hunt throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, while exercising the right of public access defined in Section II.B.5(b), the public may travel by foot from the Parking Areas to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowners, the Department may relocate or substitute Access Roads or Parking Areas identified in Exhibit C to protect the Conservation Values or the public. The construction and maintenance of any parking areas described in this subsection f., shall be the sole responsibility of the Department.
- g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.
- h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.
- i. Public access for wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter numbers outlined in subparagraph 5.b. above.
- j. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.
- k. The Landowner may participate in programs offered by the Department or other entities intended to manage hunting activities or to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the

Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

C. LANDOWNER'S RIGHTS

The Landowner reserves to itself, and to its heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C. are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval**, as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserves the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with any grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may substitute for cattle with **Prior Approval**.
2. **Agricultural Activities.** The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:
 - a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of the Easement and the Management Plan.
 - b. Areas not designated in the Baseline Report as "Development Areas", or "cultivated" shall be considered "rangeland" and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.
3. **Leasing the Land.** The Land may be leased to another agricultural operator for agricultural purposes, provided that: (i) a written lease must be entered into by the Landowner and the lessee(s); (ii) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease must be provided to the Department. The Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, are subject to **Prior Notice**, so the Department can evaluate and provide input for

the Landowner and lessee(s) to assist in compliance with the Conservation Easement, Management Plan and grazing system.

4. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.
5. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, domestic use, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, or riparian vegetation is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.
6. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):
 - a. **Development Areas.** The purpose of the Development Areas is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential and agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Development Areas. There are three Development Areas on the Everson Bench Conservation Easement as shown in Exhibit D; one of 40 acres on the Monument Parcel one of 10 acres on the Linse Lane Parcel and one of 10 acres on the Carter Road Parcel. Landowner reserves the right to restrict all recreation in the designated Development Areas.
 - b. **Residences.** The right to place or construct, alter, improve, remove, replace, and maintain up to two single-family residences, and associated non-residential improvements necessary for agricultural purposes in each development area. and to be located within the two Development Areas.
 - c. **Agricultural/Commercial Structures.** The right to construct, remove, maintain, renovate, repair or replace agricultural and commercial structures that are not used for human habitation, including, but not limited to barns, chicken houses, shelters, sheds, machine sheds, and barns. The right to place agricultural structures outside of the Development Areas with **Prior Approval**.

d. **Fences.** The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “wildlife friendly” as described in the Management Plan. This does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, haystacks, or gardens.

7. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching, or timber management as herein permitted. Any road, bridge, or waterway crossings constructed for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to the **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department’s approval shall be contingent on confirmation that (a) the road’s intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner’s written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

8. **Noncommercial Recreational Use.** Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.

9. **Utilities.**

a. *Existing Utilities.* Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines (“Utilities”).

b. *New Utilities on the Land.* Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, or beneath the Land to existing or subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. Prior to construction of new Utilities, the Landowner shall submit to the Department a Utility Plan as provided in Paragraph II. C.8.d. (“Utility Plan”) below.

c. *New Utilities serving adjacent properties.* Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. Prior to the construction of new Utilities, the

Landowner shall submit to the Department a Utility Plan as provided in Paragraph II. C.8.d. below.

d. *Utility Plan.* Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intent of this Easement prior to the Department's approval of the Utility Plan. Any new and expanded Utilities and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Fergus County, signed by the Landowner, the Department, and the utility service provider prior to construction.

10. Renewable Energy Generation for Use On the Land. With the **Prior Approval** of the Department, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities ("renewable energy production") solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off of the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department. Any renewable energy production for use on the Land and associated distribution facilities, including transmission lines and pipelines, permitted by this Easement must be consistent with protection and preservation of the Conservation Values. In particular, proposed hydropower generation may not occur if riparian or wetland habitats are impaired.

11. Agricultural Chemicals. The right to use agricultural chemicals for control of noxious weeds, as defined by the State of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of noxious weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for noxious weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies. The aerial application of herbicide to control noxious weeds is subject to **Prior Approval**, unless otherwise specified in the management plan.

12. Regulation of Public Use. The right to regulate public use of the Land at all times; subject, however, to the right of public recreational access granted to the Department in Paragraph II.B.5.

13. Oil and Gas Exploration, Extraction, and Development. The Landowner has the right to explore for and extract oil and gas in, on, or under the Land, subject, however, to the following conditions:

- a. Landowner may explore for and extract oil and gas only if such activity will not result in significant impairment or interference with the Conservation Values.
- b. Development of oil and gas may only be conducted by subsurface methods (e.g., well drilling) and must be conducted in a manner consistent with site-specific stipulations

as mutually agreed upon by the Department and the Landowner and as necessary to protect the Conservation Values. Under no circumstance may any oil or gas be removed by any surface mining method; it being understood, however, that wells may be drilled and hydrocarbon minerals may be removed at the ground surface, which shall not constitute surface mining as used herein.

- c. No oil and gas exploration, development or extraction activity may take place within or upon wetland and riparian areas, and no oil and gas operation may degrade the quality of any surface water, stream, or ground water. Any water degraded in quality resulting from permitted exploration or extraction activities must be piped off of the Land or, subject to **Prior Approval**, disposed of by other methods.
- d. Any incidental surface disturbance resulting from permitted exploration or subsurface extraction activities must be limited, localized, and temporary, and the surface shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting and tending native vegetation until the vegetation is mature, established, and self-perpetuating.
- e. Access for exploration or extraction activities shall be by existing roads; provided, however that, subject to **Prior Approval**, a new road for this purpose may be constructed if such road is sited and maintained so as to avoid adverse impacts to the Conservation Values. Any new road shall be restored as nearly as practicable to its previous condition after exploration and extraction activities are concluded.
- f. No refinery or secondary production facility may be located on the Land. Any oil and gas developed or produced from the Land must be transported from the Land in a manner that does not impair the Conservation Values, and the method of and facilities for such transport are subject to **Prior Approval**. The number and kind of structures used in the exploration for or extraction of oil and gas shall be limited to the minimum necessary to accomplish exploration, development or extraction. Upon the termination of any phase of exploration, development or extraction, all associated structures (that are not necessary for the subsequent phase) shall be removed and those portions of the Land no longer being used for the oil and gas operation shall be restored as nearly as practicable to their previous condition.
- g. Landowner and the Department acknowledge that, at the time this Easement is executed, certain third parties own or lease all, or a portion of, the oil, natural gas, and other mineral substances under the Land. If those third-party interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

This Conservation Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

14. Subdivision and Conveyance of Land Ownership.

- a. For the purposes of this Easement, the Land shall be considered to be comprised of three parcels, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that each parcel shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the parcel within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.
- b. The Landowner may sell, grant, donate, bequeath or otherwise convey any parcel of the Land in its entirety to another party.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey any parcel of the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.13.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, Landowner may sell the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II. D. 2.
2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to land uses specifically allowed by this Easement or as provided below:
 - a. *For firewood, fencing, corrals, protection and maintenance.* The Landowner is permitted to harvest timber for firewood, fencing, and corrals to be used on the Land as provided for in the Management Plan. The Landowner is also permitted to harvest timber and other woody vegetation for the protection of persons and property; and for maintenance of roads and trails. All timber harvested pursuant to this paragraph by the Landowner must be disposed of or used on the Land.

- b. *For habitat enhancement, restoration, or disease control.* Subject to **Prior Approval** by the Department, the Landowner may conduct other forest management activities only for the primary purpose of restoring or enhancing wildlife habitat or for controlling forest disease. Any request to perform forest management activities must be accompanied by a timber management plan prepared by a qualified forester or other qualified natural resource professional. The Landowner and the Department will mutually determine the completeness of the plan and its adherence to the general and specific intentions of this Easement prior to the approval of the plan and the initiation of any timber harvest.

3. Wetland and Riparian Areas.

- a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to streams, springs, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or groundwater.
- b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.
- c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining roads, fences, utility lines, and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.

- 4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited. For the purposes of this Easement the legal or de facto division or subdivision of Land shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowner transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.10. is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.6. is prohibited.
8. **Land Cultivation.** The cultivation or farming of any portion of the Land not currently cultivated is prohibited, except for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement. Currently cultivated lands are those lands appear cultivated in the Baseline Report.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting or fishing or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Development.** Landowner may not engage in, authorize, or contract for any exploration for or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, or similar materials, except as provided for Paragraphs II.C.12. and II.C.14. Any other mineral exploration, development, or extraction is prohibited.
11. **Certain Livestock.** The raising, grazing, or presence on the Land of domestic sheep, goats and llamas is prohibited until such time effective management practices are developed and implemented to mitigate concerns of disease transmission between wild sheep and domestics.
12. **Buildings and Structures.** The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Section II.C.
13. **Residential Use.** Residential use of the Land or any portion thereof is prohibited other than as expressly allowed in Section II. C.
14. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.

15. Shooting Preserve, Wildlife Propagation and Related Activities. The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner has the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land.

16. Commercial and Industrial Use. Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes.

17. Waste Disposal. The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited; provided, however, that the deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C., are not considered waste disposal.

18. Hazardous Materials. Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

E. MANAGEMENT PLAN

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, , wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the

Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

F. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report (“Baseline Report”), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and determined to be an accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other changed habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the changed conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. PRIOR NOTICE AND PRIOR APPROVAL

1. Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.
2. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 45 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 45 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department

shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

3. If the Department fails to respond to Landowner's notice of Prior Approval within 45 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.
4. The Landowner shall be under no liability or obligation for any failure to give Prior Notice or seek Prior Approval for any activity undertaken by the Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.
5. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowner:

To Department: Department of Fish, Wildlife & Parks
Attention: Administrator, Wildlife Division
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

With a copy to: Department of Fish, Wildlife & Parks
Attention: Regional Supervisor
4600 Giant Springs Road
Great Falls, MT 59405

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business

days after deposit thereof with a courier or mail service, return receipt requested. Email notices shall be deemed effective upon delivery to recipient.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowner:

1. Fails to cure the violation within 30 days after receipt of notice from the Department, or
2. Under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing the violation within the 30 day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. Fails to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner's liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural

earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In any action arising from the terms of this Easement, each side shall bear its own costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

I. HOLD HARMLESS AND INDEMNITY

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or its agents, employees or contractors.

Landowner and its successors shall have recourse from the Department and the Department shall be liable to, and shall indemnify Landowner and its successors for one hundred percent (100%) of any losses and or claims against Landowner that occur as a result of the Department or Public's use of this Easement except for claims arising out of Landowner or Landowner's agents

gross negligence. Additionally, the Department shall indemnify, defend, protect and hold Landowner and its successors as well as their respective officers, directors, employees and agents, harmless from and against any losses and or claims arising from the Department and or the Public's use of this Easement except for claims arising out of Landowner or Landowner's agents gross negligence.

This provision shall survive the potential termination of the Easement

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 45 percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party 44 percent of the unencumbered value of the real property and the Department shall be entitled to receive 56 percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of _____[Bank], [address]_ ("Lienholder"). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on _____, in Book _____, page _____, under Document No. _____, Records of Fergus County, Montana (the "Mortgage"). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purpose of the Easement in perpetuity and to prevent any

modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

L. ASSIGNMENT

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

M. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Cascade County.

N. RECORDING

The Department shall record this instrument in a timely fashion in the official records of Fergus County, Montana, and may re-record it at any time as may be required to preserve its rights in this Easement.

O. REPRESENTATIONS AND WARRANTIES

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on

the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

P. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L. above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except **that liability for acts or omissions occurring prior to transfer survive transfer.**

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.
12. Section Headings. Section headings are for convenience only and will not be given effect in interpretation of this Easement.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.

GRANTED BY: LANDOWNER

ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

Martha Williams, Director

STATE OF MONTANA)
) : ss
COUNTY OF LEWIS AND CLARK)

This instrument was acknowledged before me on _____, 20__, by Martha Williams, as Director of the Montana Department of Fish, Wildlife and Parks.

Notary Public for the State of Montana

Printed Name:_____

Residing at _____

My Commission Expires _____

ACKNOWLEDGEMENTS

STATE OF MONTANA)
 : ss.
COUNTY OF _____)

 This instrument was acknowledged before me on _____, 2018,
by_____.

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My Commission Expires _____

EXHIBIT A – LEGAL DESCRIPTION

ALL Township 20 North Range 15 East
Acreage

Linse Lane Parcel

Section 11, E2,NE4NW4	360
Section 12, NW4NW4, SW4NW4, NW4SW4	120

Carter Road Parcel

Section 22, NE4, N2NW4, SE4NW4	280
Section 14, W2W2, SE4SW4	200
Section 15, NE4, E2NW4, E2SE4	320

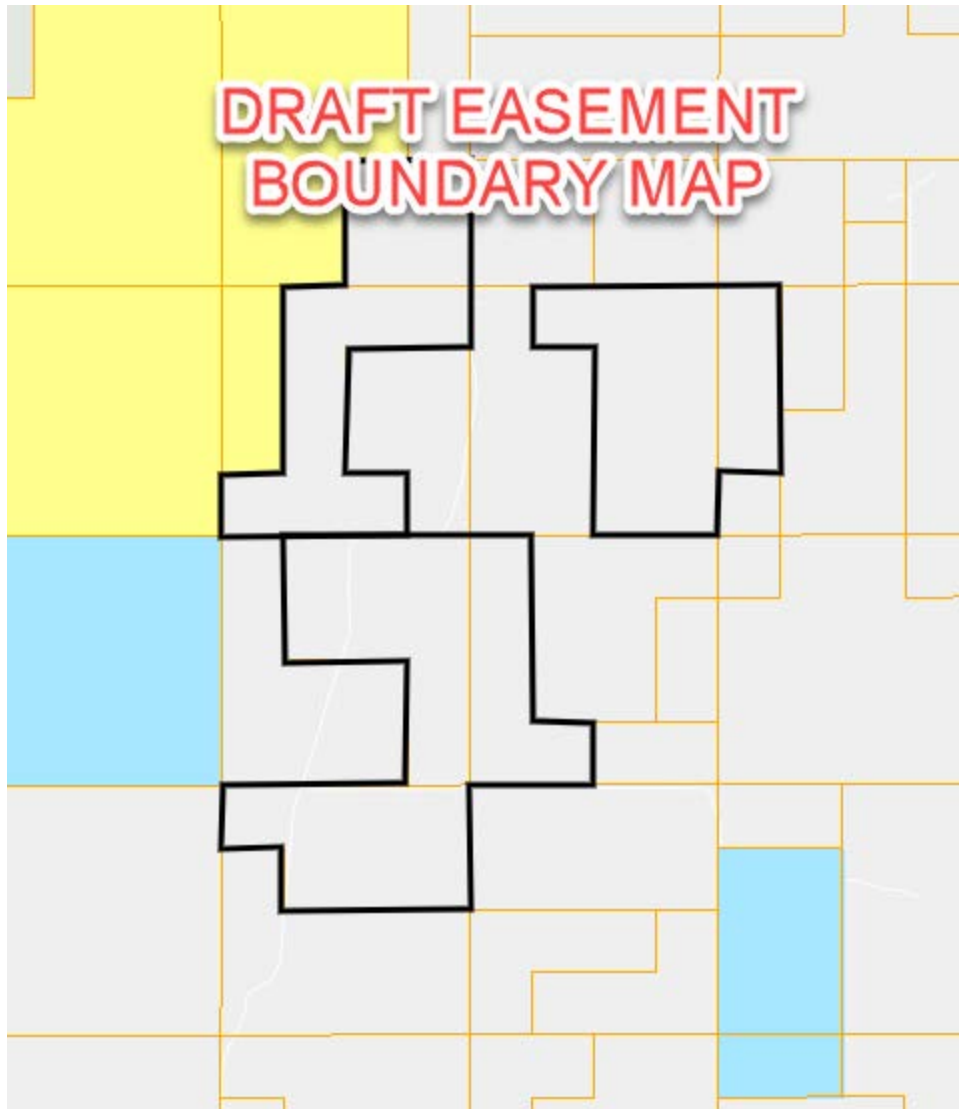
Monument Parcel

Section 10, NE4NE4, NW4NE4, E2W2, SW4SW4, SW4SE4	320
Section 3, SE4	160
Total Acreage	1760

END OF EXHIBIT A

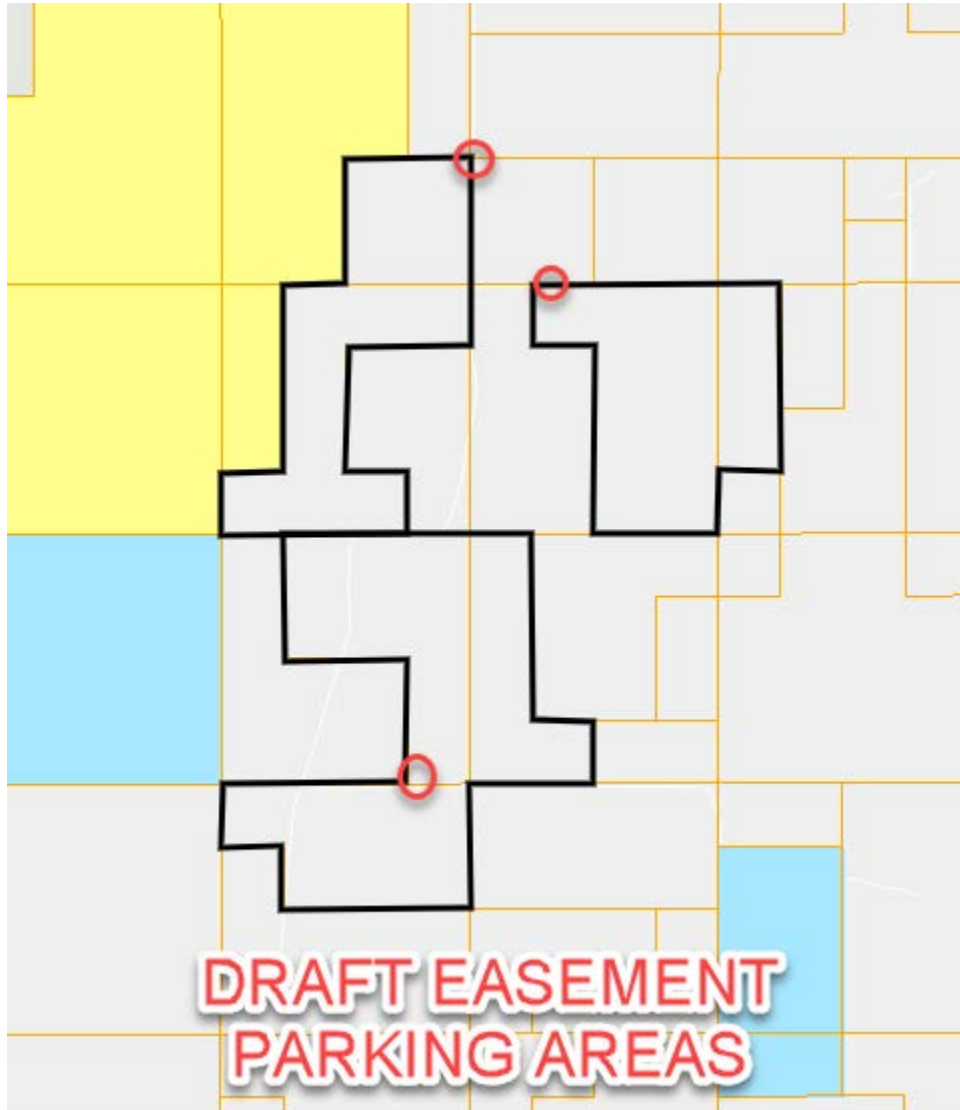
EXHIBIT B

CONSERVATION EASEMENT BOUNDARY



END OF EXHIBIT B

EXHIBIT C
PARKING AREAS

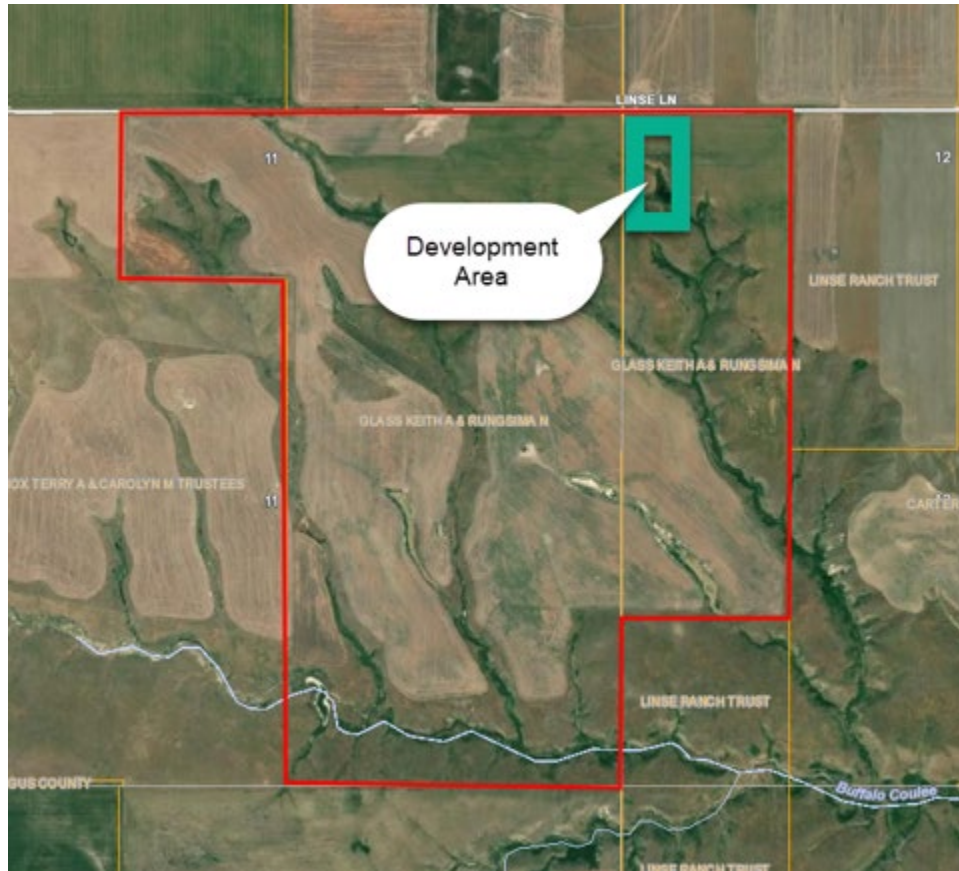


END OF EXHIBIT C

EXHIBIT D

DEVELOPMENT AREAS

LINSE LANE PARCEL



CARTER ROAD PARCEL



MONUMENT PARCEL



END OF EXHIBIT D



EVERSON BENCH CONSERVATION EASEMENT

DRAFT MANAGEMENT PLAN

This Management Plan, dated as of _____, 2020, is entered into by **KEITH and RUNSIGMA GLASS**, whose principal address is 808 Broadway Avenue, Denton, MT 59430 (hereafter referred to as “Landowners” and **the MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereafter referred to as “MFWP” or the “Department”).

This Management Plan is being entered into pursuant to Section XX.X. of that certain Deed of Conservation Easement and Public Access Easement granted by Keith and Runsigma Glass to the Department on _____, 2020 and recorded in Book __, Page __ of the records of Fergus County, Montana, (the “Easement”).

This Management Plan serves as a flexible link between Conservation Easement (CE) terms intended to endure in perpetuity and changeable conditions and situations on the Land. It is a living document, to be reviewed periodically by MFWP and the Landowners, and to be amended as needed upon agreement by both parties. Its function is to document strategies for land management in which MFWP and the Landowners would be cooperating to ensure consistency with the terms and intent of the CE. The principal strategy is periodic meetings with the Landowners and field monitoring of compliance with CE terms. Additionally, this Management Plan details strategies for managing native lands, improving wildlife habitat, controlling noxious weeds, and allowing public access as guaranteed in the CE.

The following Appendices are attached and incorporated into this Management Plan by this reference:

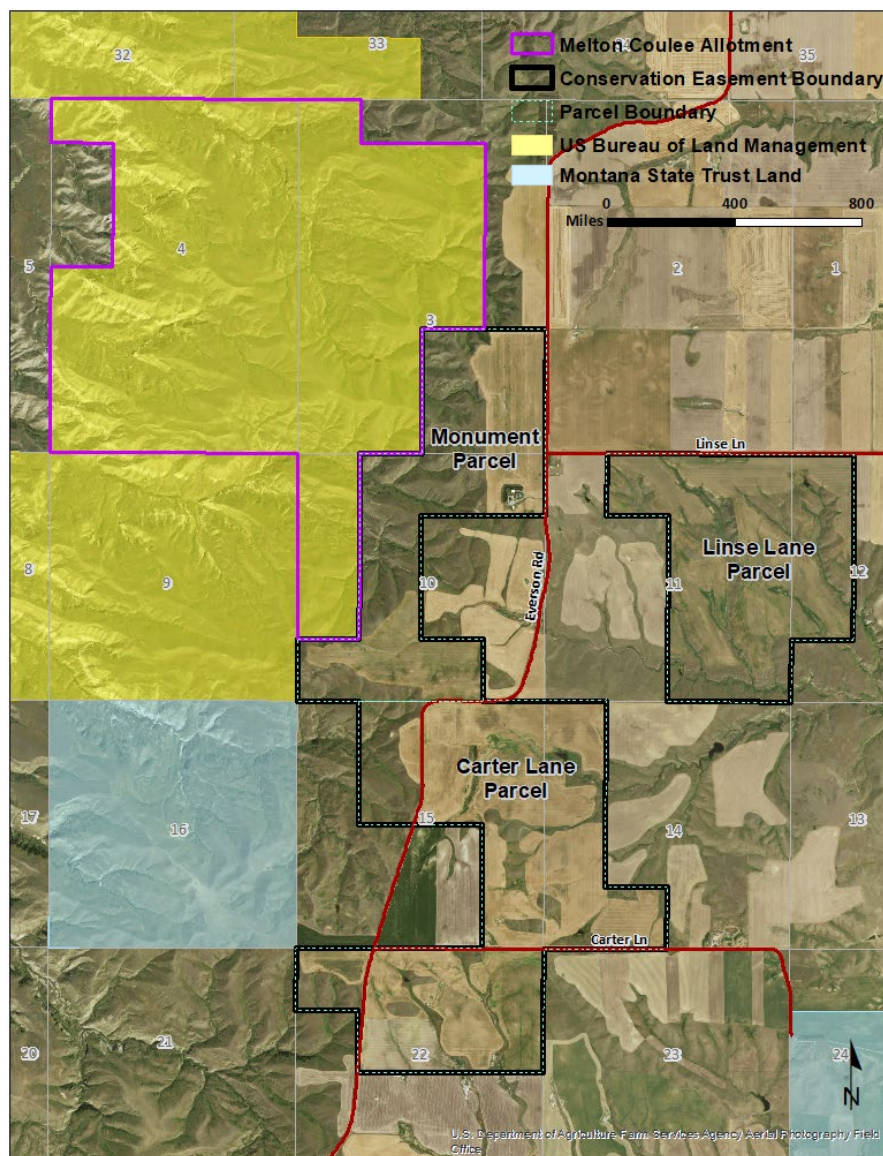
- Appendix A. MFWP’s Minimum Standards for Grazing Livestock
- Appendix B. Grazing System
- Appendix C. Hunting/Public Access Rules & Map
- Appendix D. Wildlife-Friendly Fencing Guidelines

I. Introduction

The purpose of the Everson Bench Conservation Easement (hereafter, Everson Bench CE) is to preserve and protect the conservation values of the Land, particularly the habitat the Land provides for wildlife as well as the agricultural and historic resources into perpetuity. Historic use of the land is livestock grazing and crop production. Additionally, the land provides access to ~9,000 acres of currently inaccessible BLM and DNRC land.

The 1,733-acre property which makes up the Everson Bench CE is located 14 miles northeast of Denton, and 34 miles north of Lewistown, in Township 20N, Range 15E, portions of Sections 3, 10, 11, 12, 14, 15, and 22 (Fergus County, FWP Region 4, Deer/Elk Hunting District (HD) 426; Figure 2). The property is also located within Montana's State Wildlife Action Plan (SWAP) 2015 Arrow Creek and Judith River Terrestrial Focus Areas.

Figure 1. Everson Bench CE deeded lands, associated leased lands, and parcel delineations.



The majority of lands within the Everson Bench CE are cultivated crops, however their juxtaposition along Everson Bench and the steep badland-breaks of Arrow and Coffee Creeks lends excellent wildlife habitat. Mule deer, pronghorn, and elk utilize the supplemental forage afforded by agriculture in this area as well as the hiding cover provided by steep terrain, dense sagebrush, and timbered coulees. The area is also heavily utilized by sharptailed grouse; the property contains one known lek and four additional leks are within approximately 2 miles of the CE's borders. The Melton Coulee BLM Allotment (1,506 acres) is associated with this property, but at the time is subleased to another landowner.

The native lands (628 acres) within the Everson Bench CE consist of three habitats of statewide importance: lowland/prairie grassland (390 acres), sagebrush steppe & sagebrush-dominated shrubland (161 acres) and riparian and wetland (62 acres), as identified in Montana's Comprehensive Fish and Wildlife Strategy (CFWCS), published in 2005, as Tier I Community Types in Greatest Need of Conservation. Additionally, these three habitat types support several state Species of Concern. From a statewide and an eco-region perspective, riparian and shrub grassland habitats are important habitats that are highly productive, in need of protection and conservation, and are threatened by subdivision or land-use conversions (e.g., further conversion to cropland).

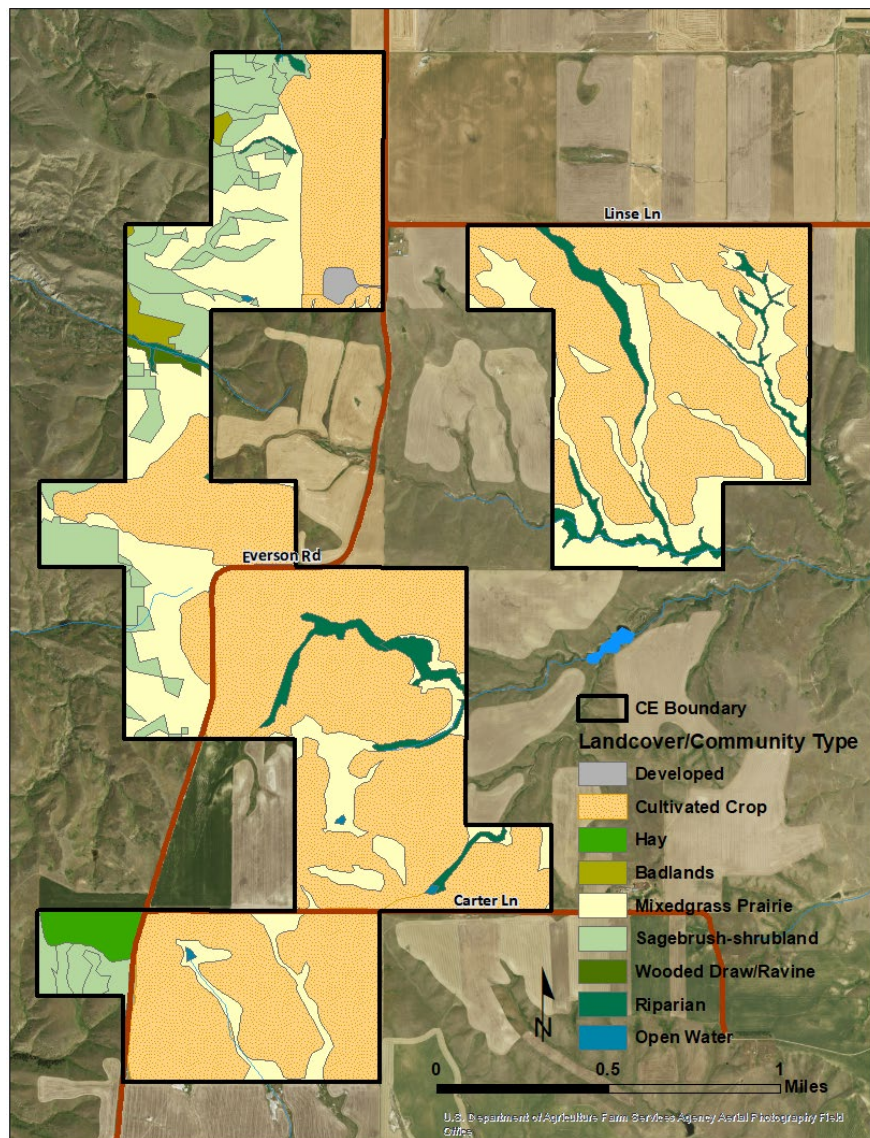
A breakdown of the deeded lands' community types is as follows: 6 acres rural development, 1077 acres cultivated cropland, 20 acres pasture/hay, 1 acre introduced upland vegetation (i.e., exotic/tame grasses), 11 acres breaks/badlands, 102 acres sagebrush steppe, 53 acres shrubland, 6 acres greasewood flat, 4 acres wooded draw and ravine, 390 acres mixedgrass prairie, 61 acres riparian, and 2 acres open water (Figure 2). Total native range is 628 acres, or approximately 36% of the property's landcover.

Current land use is farming, primarily winter and spring wheat. The landowner engages in some wildlife-friendly practices, including leaving 12 to 16" of stubble in areas and planting peas as a cover crop after harvesting wheat. During fall, the Linse Lane parcel supports late-season cattle grazing, and historically, was used as emergency pasture during drought years when the associated BLM Allotment was unable to sustain cattle grazing for its full permit period. However, no grazing has occurred on Everson Bench CE lands in over 15 years. Potential exists for prescribed grazing to occur on the Land, however fencing out cropland would prove logistically challenging and expensive. Should grazing occur in the future, a mutually agreed-upon grazing plan will be developed that follows MFWP's Minimum Standards for Grazing Livestock (Appendix A). Grazing that occurs on the BLM allotment follows those standards and regulations.

The Everson Bench CE encompasses three parcels, one which adjoins ~9,000 acres of BLM and DNRC lands (Monument Parcel; Figure 1). Primary game species inhabiting the Land and adjoining public lands include mule deer, pronghorn, elk, sharp-tailed grouse, Hungarian partridge, ring-necked pheasant, and mourning dove. Numerous species of raptors, passerine birds and other non-game are also afforded habitat and/or potential habitat. Several Species of Concern have potential distribution on the Land, including Great Plains toad, plains spadefoot, Baird's sparrow, bobolink, Brewer's sparrow, burrowing owl, Cassin's finch, chestnut-collared longspur, ferruginous hawk, golden eagle, greater sage-grouse, green-tailed towhee, loggerhead shrike, long-billed curlew, McCown's longspur, mountain plover, peregrine falcon, Sprague's

pipit, black-tailed prairie dog, dwarf shrew, fringed myotis, Merriam's shrew, Preble's shrew, swift fox, greater short-horned lizard, milksnake, and western hog-nosed snake.

Figure 2. Landcover types on the Everson Bench CE.



II. Goals, Objectives, Concerns, and Strategies

Goal 1: Conserve and enhance native plant communities within the Everson Bench CE boundaries including the native sagebrush shrubland, conifer woodlands, mixedgrass prairie, and riparian, and preserve the integrity of these lands for future generations. By implementation of Easement terms, the quality and amounts of native habitats, important agricultural habitats and wildlife potential currently found on the Land shall be maintained without displacing normal private land use.

Objective 1a: *Manage native grassland, shrubland, and riparian vegetation to maintain and improve these plant communities for the benefit of wildlife and livestock.*

Strategy 1a: Maintain big sagebrush steppe, plains grassland, conifer woodland, and native riparian habitats and associated streams for wildlife habitat through CE protections. Reduced habitat quality often results in reductions and/or displacement of wildlife.

Many shrub and tree species, such as Wyoming Big Sagebrush and silver sage, which are the prevailing shrub species on the Everson Bench CE, are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub and tree species important to wildlife by any means is prohibited within terms of the Easement, including, but not limited to: burning, plowing, chemical treatment or removal of shrub and tree species, unless such activity is mutually agreed upon in writing by the Landowners and MFWP. These prohibitions do not apply to the routine clearing or control of brush that is confined to construction and maintenance of trails, roads, fences, and structures permitted under this Easement.

As per Easement terms, the Landowners have the right to construct, remove, maintain, renovate, repair, or replace fences, pipelines, waterlines, dams, and ditches necessary for generally-accepted agricultural practices provided the structures do not significantly impact wildlife habitat or wildlife migration through the Land. All new fence construction must comply with MFWP's Wildlife-Friendly Fencing guidelines (See *A Landowner's Guide to Wildlife Friendly Fences*; Appendix D).

In addition to habitat maintenance strategies identified in Objective 1a, habitat enhancement opportunities through participation in Federal, State, and other habitat programs may be pursued on the Land provided those habitat programs implemented fall within the requirements set forth by the Easement. The Department may work with the Landowner to implement future habitat improvement projects on the Land via separate agreements through the Upland Game Bird Habitat Enhancement Program, other programs, or other technical support.

It will be the Landowners' responsibility to control noxious weeds, by chemical, mechanical, or biological methods, in the amounts and frequency of application constituting the minimum necessary to accomplish reasonable control in a manner that will minimize impacts to native plants.

The Department will be responsible for establishing a Baseline Inventory Report that will document plant communities, roads, fences, buildings, and other infrastructure that will serve as a baseline for future monitoring. Additional vegetation photo points and/or other monitoring plots may be established and maintained by MFWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

Objective 1b: *Manage and enhance current tilled and non-native habitats for the benefit of wildlife in addition to economic income.*

Strategy 1b: Farming activity has occurred on the Land prior to the establishment of the Everson Bench CE (1,077 acres cultivated crops, 20 acres hay; Figure 2). While cropland can be an important source of habitat for wildlife if managed properly, it cannot serve as the sole source of habitat for a variety of wildlife species. Upland game birds and other wildlife use cropland as a winter food source, and as food and cover during breeding/brood-rearing season.

Existing cropped fields will continue to be managed for economic income for the Landowners, but certain practices may be implemented to improve wildlife habitat values. Other wildlife-friendly cropland management strategies may be applied to the Everson Bench CE:

- 1) Avoidance of fall tillage. The Landowner already seeds mainly spring wheat, rotating legumes in approximately every five years. Planting majority spring wheat minimizes spraying and excess residue common with winter wheat. Avoiding or minimizing fall tillage leaves weed seeds/waste grain available for wildlife during a critical time of year.
- 2) Retain a buffer around wetland/riparian areas. Grass buffers between these areas and cropped fields provides cover and can prevent soil erosion, provide habitat and minimize salinity.
- 3) Retain rows or strips at the edges of standing crops, which will provide a buffer area of winter food and cover.
- 4) Retain tall stubble of at least 12-16". This will provide winter food and thermal cover, particularly in years of higher snowfall. Leaving stubble at these heights also maximizes topsoil moisture retention (by capturing snow) and can limit erosion (Figure 3).

Figure 3. Leaving tall stubble reduces snow displacement, allowing for greater moisture retention. It also provides better thermal cover for wildlife in adverse winter conditions.



Other collaborative habitat improvements and enhancements may also be implemented, such as food plots, shelter belts, nesting cover plantings, etc. Habitat enhancement projects will be handled through separate term agreements between the Landowner and contributing partners; such enhancements are not a requirement of this easement or Management Plan.

Additional sod-busting or tilling of native rangeland vegetation is not permitted under this Easement. Several existing stands of smooth brome may be converted back to native rangeland

or utilized for additional upland game bird habitat projects as smooth brome provides little wildlife value.

Goal 2: Manage wildlife populations in balance with available resources and provide guaranteed public hunting and wildlife viewing opportunities with minimal impact to CE lands and adjacent physical and human environments.

Objective 2a: *Maintain wildlife use of the property in balance with available resources.*

Strategy 2: The Land and adjacent private and public lands provide critical year-round habitat for mule deer, pronghorn, elk, upland game birds, and a host of other game and nongame species listed above. The area also provides seasonal habitat for mourning doves, migratory raptors, and passerine birds. Wildlife-friendly agricultural practices, control of noxious weeds, prohibition of further conversion of native vegetation and development, the preservation of shrub species on the property, and (if applicable) a rest-rotation grazing system will ensure the habitat values for all these species are maintained.

Wild game populations fluctuate over time and may exceed MFWP management objectives, thus contributing to above-average wildlife use of the Land, resulting in game damage problems. Such circumstances on the Land will be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts will be provided on an “as needed” basis to the Landowners.

Objective 2b: *Provide guaranteed public hunting access and public recreation opportunity.*

Strategy 2b: Per MFWP Conservation and Public Access Easement terms, the Landowners must allow reasonable non-motorized public access on and across the land for hunting, wildlife viewing, and other forms of non-motorized recreation (hereafter, hunting and recreational access). The Landowners may not charge fees, lease, commercially outfit hunting, or charge trespass fees on deeded land or to adjoining public lands.

When demand exists, a minimum of 350 hunter-days will be allowed on the Everson Bench CE consistent with Fish and Wildlife Commission-established regulations and dates/seasons. Year-round recreational access will also be allowed on all parcels, and across the Monument and Carter Lane Parcels to adjacent public lands. Everson Bench CE hunting and access rules as defined in this Management Plan may be altered upon mutual agreement between MFWP and the Landowners. Appendix C provides hunting/public access rules and a map to be used for gaining access to the CE lands. Parking areas will be constructed and funded by MFWP; estimated total cost will be \$10,000.

Camping on Everson Bench CE is at the discretion of the Landowner; see Appendix C for camping rules. Camping on adjoining DNRC and BLM lands is allowed per those agencies’ restrictions. The Landowners may deny access to, or expel from the Land, any person for cause, including but not limited to: intoxication or use of illegal substances, reckless behavior that jeopardizes human life, wildlife habitat, or Landowners’ properties, or is in violation of law or regulation applicable to public use of the Land; or misconduct under or violation of the terms of public access provided in this Easement, including any plan of access adopted and implemented under this Management Plan.

The Landowners may apply for, and MFWP may make available, certain services and compensation offered through various (present or future), access and land management programs as may exist at any time. A current example at the time of this Easement's establishment is MFWP's Block Management Program. The property is currently enrolled in Block Management, which is expected to continue. Services and/or compensation for public use impacts through the Block Management or any other access or land management Program is contingent upon Program continuation, sufficient Program funding and a prioritized ranking and selection of the Ranch and its access and hunting opportunities when compared to other land enrollment applications.

III. Overall MFWP/Everson Bench Conservation Easement Compliance

Annual monitoring will be completed on the Everson Bench CE. This assessment shall be conducted by MFWP or a designated third party and will involve meeting with the Landowners, completing field reviews to assess Management Plan effectiveness, to review the Landowners' compliance with Easement terms and Baseline Inventory. The Landowners are encouraged to thoroughly familiarize themselves with the Management Plan the easement terms in the Deed of Conservation Easement, and to contact MFWP with any questions or concerns in order to avoid non-compliance.

Final Management Plan Approved By:

Keith Glass

Date

Runsigma Glass

Date

Cory Loecker, MFWP Region 4 Wildlife Manager

Date

Gary Bertellotti, MFWP Region 4 Supervisor

Date

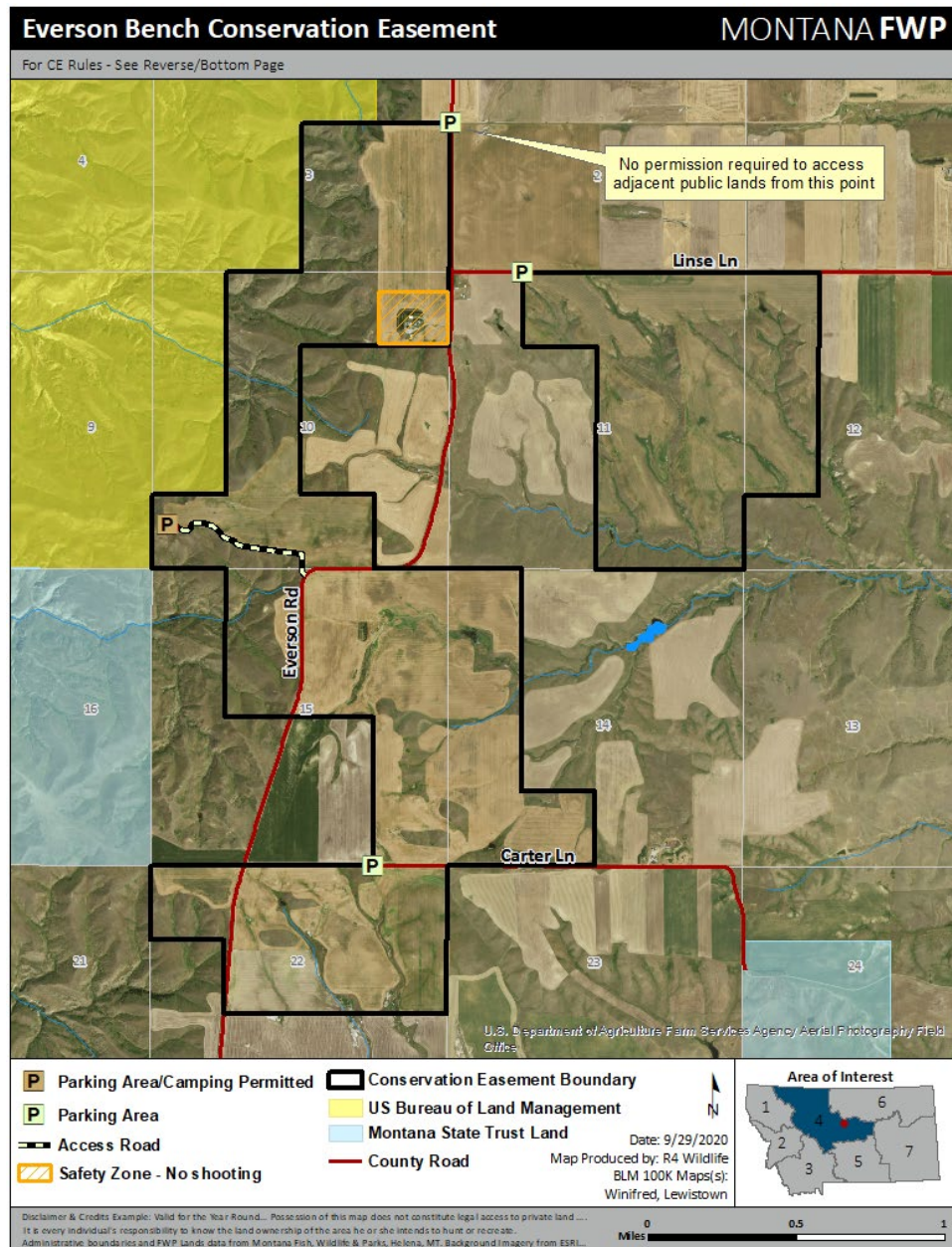
Ken McDonald, MFWP Wildlife Division Administrator

Date



EVERSON BENCH CONSERVATION EASEMENT

APPENDIX A – HUNTING/PUBLIC ACCESS MAP & RULES





The Everson Bench Conservation Easement (hereafter, Everson Bench CE) is located within FWP Deer/Elk Hunting District 426, and Antelope Hunting District 471.

1) The Everson Bench CE is open to public hunting of all legally available game and fish species during Fish and Wildlife (F&W) Commission-established upland game bird, waterfowl, and big game hunting seasons (approximately August 15 through January 1). Recreational access for wildlife viewing, hiking, and birding is also permitted year-round outside of the hunting season (January 2 through August 14) with Landowner permission. The CE also permits year-round access across the property to adjacent public lands.

- Hunting access during F&W Commission-established seasons is currently administered via MFWP's Block Management Program (#204 Everson Bench). No reservations are required to access the Everson Bench CE during hunting season. Non-motorized access is permitted via designated parking areas also shown on the attached map. Hunters must sign-in at sign-in boxes located at parking areas.
- For recreational access to Everson Bench CE deeded land *outside* of F&W Commission-established hunting seasons, call 406-366-1887 (Keith Glass, Landowner) for permission.
- Year-round nonmotorized access to public lands adjacent to the Everson Bench CE may be obtained only via the northernmost parking area on the attached map. Users must park and walk into public lands from this parking area by following a route along the northern property line. No permission or sign-in is required for access to public lands.

2) Hunters must come prepared to retrieve harvested game (i.e., game cart, backpack, etc.). Users are encouraged to come with a detailed map/GPS as not all boundaries may be marked. It is the user's responsibility to know where they are in relation to neighboring lands.

3) No hunting or shooting is permitted in the vicinity of buildings or residences.

4) Overnight camping is permitted on the Everson Bench CE at the parking area designated on the attached map (provided access/permission is first obtained through Block Management or the Landowner). Camping is restricted to seven (7) days and leaving camps unattended overnight on deeded ground is not permitted. Camping is also permitted on adjacent DNRC or BLM lands. If camping on adjacent public lands, users must follow those respective agencies' camping regulations. Littering, visible latrine pits, and open fires are prohibited on the Everson Bench CE.

5) Users are permitted to bring stock (horses, mules) on the Everson Bench CE. Please use only certified weed seed-free hay and keep areas around horsetrailers clean.

6) The Landowner may deny access to an individual(s) for cause, ARM rule 12.4.205 (d). Examples – intoxication, belligerence, or violent behavior, violation of CE or Block Management rules, etc.

7) Violators of any Everson Bench CE rules and/or State hunting regulations may be prosecuted. Convictions may result in the loss of Conservation Easement/Block Management access privileges in addition to other penalties. Violations can be reported to **1-800-TIP-MONT**.



EVERSON BENCH CONSERVATION EASEMENT

APPENDIX B – WILDLIFE-FRIENDLY FENCE GUIDELINES

The complete guidelines will be published in the final Everson Bench Conservation Easement (CE) held by the Landowner and the Department. Other copies of the Management Plan will contain a link to access these guidelines: <http://fwp.mt.gov/fishAndWildlife/livingWithWildlife/>

